

Supreme Court of Ireland Decisions

Ryan v. A.G. [1965] IESC 1; [1965] IR 294 (3rd July, 1965)
Supreme Court

Gladys Ryan
(Plaintiff)

v.

The Attorney General
(Defendant)

No. 913p of 1962
[3rd July, 1965]

Status: Reported at [1965] IR 294

O'Dálaigh C.J. :-

1. This appeal is brought by the plaintiff, Mrs. Gladys Ryan, against an order of Mr. Justice Kenny, dated the 31st July, 1963, dismissing, with costs, the plaintiff's action, in which she sought a declaration that s. 2, sub-ss. 1, 2 and 3 and ss. 3 and 4 of the Health (Fluoridation of Water Supplies) Act, are repugnant to the Constitution and invalid.
2. The Health (Fluoridation of Water Supplies) Act, 1960, was passed by the Oireachtas on the 28th day of December, 1960. In its long title the Act is expressed to be "an Act to provide for the making by Health Authorities of arrangements for the fluoridation of water supplied to the public by sanitary authorities through pipes and to provide for certain other matters connected with the matter aforesaid."
3. Sect. 1 defines the terms "fluoridation," "health authority," "the Minister" and "sanitary authority." "Fluoridation" includes the addition of fluorine in any form. "Health authority" has the meaning assigned to it by the Health Act, 1947, and the Health Authorities Act, 1960. "The Minister" means the Minister for Health. "Sanitary authority" has the same meaning as in the Local Government (Sanitary Services) Acts, 1878 to 1952.
4. The impugned provisions of s. 2. are textually as follows:-

“(1) Subject to and in accordance with this Act and regulations made under subsection (3) of this section, a health authority shall arrange for the fluoridation of water supplied to the public by sanitary authorities through pipes.

“(2) The Minister may, in relation to a particular health authority, fix a date before which they shall, in relation to a particular public water supply, arrange for the fluoridation of water derived therefrom.

“(3) (a) The Minister may make regulations as to the manner in which and the extent to which health authorities shall perform their functions under this Act, and such regulations shall in particular provide for the specification of the amount of fluorine (which shall not exceed one part by weight of fluorine per million parts of water) which may be added to a water supply.

(b) Regulations made under this sub-section may relate to one or more health authorities and different regulations may be made in relation to different health authorities.”

Sub-sect. 4 of s. 2 requires the Minister, before making regulations under the section, to cause to be made (i) a survey of the incidence of dental caries in a representative sample of pupils attending full-time day schools in the functional area or functional areas of the health authority or health authorities to whom the regulations relate, and (ii) an analysis or series of analyses of the quantities of fluorine and such other constituents as the Minister may, determine in the water supplied by sanitary authorities through pipes to the public in the functional area or functional areas of the health authorities to whom the regulations relate; and it is also the Minister's duty to cause to be presented to each House of the Oireachtas a report on the survey and analysis or analyses so made. Such report, in relation to the survey, must include particulars of the procedure adopted in making it and the numbers, classified by age and otherwise, of the pupils to whom it relates but must not include any information in respect of any identifiable pupil. Sub-sect. 5 of the section requires that any information in relation to dental caries in individuals which is obtained in the course of a survey under sub-s. 4 must be treated in a confidential manner. Sub-sect. 6 provides that nothing in sub-s. 4 shall be construed as imposing an obligation on any person to submit himself or any person for whom he is responsible to examination or as requiring the controlling authority of any school to afford facilities for the making of a survey under that sub-section. Sects. 3 and 4, which are also impugned, are textually as follows:-

“3.- (1) Where water from a particular public water supply is supplied to the functional area of one health authority only, the fluoridation of water derived therefrom shall be arranged by that health authority.

(2) Where water from a particular public water supply is supplied to the functional areas of two or more health authorities, the fluoridation of water

derived therefrom shall be arranged by such of those health authorities as the Minister may determine.

“4.- (1) (a) The Minister may, after consultation with the Minister for Local Government, make regulations under this subsection requiring sanitary authorities to perform, as agents for health authorities, such acts, in relation to the fluoridation of water, as the Minister thinks fit and specifies in the regulations.

(b) Regulations under this subsection may relate to one or more sanitary authorities and different regulations may be made in relation to different sanitary authorities.

(c) Every sanitary authority shall, notwithstanding anything contained in the Local Government (Sanitary Services) Acts, 1878 to 1952, or in any local Act relating to the supply of water to the public, comply with any regulations made under this subsection which are applicable to that sanitary authority.

(d) A sanitary authority may, with the consent of the Minister for Local Government, borrow for the purpose of defraying any expenses incurred by them under regulations made under this subsection as if they were expenses under the Local Government (Sanitary Services) Acts, 1873 to 1952.

(e) The appropriate health authority shall pay, on demand, to a sanitary authority any expenses (including payment of loan charges) incurred in a local financial year by that authority under regulations made under this subsection.

(2) Where the Minister has, under subsection 2 of section 2 of this Act, fixed in relation to a particular health authority, a date before which that health authority shall, in relation to a particular public water supply, arrange for the fluoridation of water derived therefrom, a sanitary authority who are required by regulations made under subsection 1 of this section to perform, as agent for that health authority, certain acts in relation to the fluoridation of water shall before that date perform those acts in relation to that particular public water supply.”

As sects. 5 to 10 are not impugned, it is not necessary to notice them.

Sect. 9 should, however, perhaps be noted as showing that the Oireachtas are preserving a supervisory control. The section requires that every regulation made by the Minister shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the regulation is passed by either House within the next subsequent twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. Pursuant to the Act, the Minister in 1961 caused a survey of the incidence of dental caries among children in the Dublin-Kildare-Wicklow Health Authority areas to be carried out, and he also caused to be made analyses of the piped water supplies in each of those areas; and in the same year a

report of the survey and analyses was presented to the Oireachtas. The survey of the incidence of dental caries was carried out by the Medical Research Council, and the results of the survey are summarised in the report as follows:-

“1. The survey discloses an extremely high individual incidence and a widespread prevalence of dental caries (decay) among school children attending full-time day schools in the City and County of Dublin and in the Counties of Kildare and Wicklow. It discloses also that the incidence and prevalence were uniformly high throughout the three areas.

2. Among the children in the age group 15 to 18 years [911] only one child was recorded as entirely free of caries experience.

3. The survey does not disclose the early or incipient stages of dental decay and consequently must be accepted as an understatement of the total amount of caries present.”

5. In the case of the piped water supplies in the Dublin Health Authority area the analyses were carried out by the public analyst for the city and county of Dublin. For this area the results of the analyses show that the fluorine content is less than 0.1 parts per million except in the case of the Balbriggan-Skerries, Rush, Barnacullia and Kiltiernan-Ballaly supplies, and in no case is the figure of 0.2 parts per million exceeded.

6. On the 15th May, 1962, the Minister, in exercise of his powers under ss. 2 and 4 of the Act, made the Fluoridation of Water Supplies (Dublin) Regulations, 1962 (S.I., No. 75 of 1962). These Regulations, at Art. 3, required the Dublin health authority to arrange, in accordance with the Regulations, for the fluoridation of the public water supplies specified in the first schedule, being the piped water supply provided by the Corporation of Dublin and the already-named four supplies in the Dublin Health Authority area. The amount of fluorine which may be added to a water supply is provided for in Art. 3 in these words:- “ The amount of fluorine which may be added to a water supply in accordance with these Regulations shall be such that the water, after the addition of the fluorine, shall contain not more than one part of fluorine per million parts of water, and not less than eight-tenths of a part of fluorine per million parts of water.”

7. At Article 6 of the Regulations it is provided that fluorine may be added in accordance with the Regulations either in the form of sodium fluoride or of sodium silico fluoride, each complying with the scheduled specifications. These specifications include a provision that neither substance shall “contain any toxic or harmful impurities when dissolved in water.” The Regulations also provide, at Art. 8, that the fluorine content of public water supplies mentioned in the first schedule to the Regulations to

which fluorine has been added shall be determined daily by a colorimetric method and, in addition, shall be determined by a distillation method at intervals not exceeding two weeks during the period of six months after the date on which the fluorine shall have been first so added, and thereafter .at intervals not exceeding four weeks. For reasons subsequently stated the word “ fluorine” in the Regulations must be interpreted as equivalent to “fluoride ion.”

8. It should also be said that prior to the introduction of the Bill for the making of arrangements for the fluoridation of, water supplies the Minister for Health, pursuant to s. 98, sub-s. 3, of the Health Act, 1947, established a Fluorine Consultative Council to advise on the following matters, viz., “ Whether with a view to reducing the incidence of dental caries it is desirable to provide for an increased intake of fluorine, and, if the Council considers it so desirable, to advise as to the best method of securing such an increased intake and as to any safeguards and precautions necessary.” The report of the Fluorine Consultative Council, dated the 20th May, 1958, refers to a dental caries survey of about 2,000 school children carried out in Ireland in 1952 under the auspices of the Medical Research Council (Dental Caries in Ireland. Report of M.R.C. 1952) and says :-“The Council is satisfied from a study of the Report on the Dental Caries Survey and from the experience of the dental profession, as expressed by its representatives on the Council, that there is a high incidence of dental caries widespread in Ireland” (paragraph 2). In the Report of the Consultative Council the term “fluoride” is used, and the Report points out that the terms “fluoride” and “fluorine” are interchangeable when discussing the natural occurrence of fluorine. The Report states that the concentration of fluorides in water is influenced by the geological strata through which the water percolates, and it calls attention to an investigation carried out by Drum in 1948 under the auspices of the Medical Research Council into the composition of Irish drinking waters with special reference to the distribution and significance of fluoride (Drum J. A.: Scientific proceedings of the Royal Dublin Society, Vol. 25 (N.S.), July, 1949). Drum’s studies of some 42 waters showed that only 10 contained fluoride, and concentrations in these ranged from 0·1 to 0·3 p.p.m.F. (parts per million expressed as fluorine).

9. The Report of the Consultative Council further points out that fluoride is found naturally as a trace element in the majority of foods, e.g., in vegetables, meat, cereals, fruit, fish, tea. Surveys carried out by McClure (McClure, F. J.: American Journal of Diseases of Children, Vol. 66, 362 (1939) and Public Health Report, Vol. 64, 1061 (1949)) refer to over 130 foods which contain fluorides. It is not possible, the Report says, to exclude fluoride from human diets, and it adds:- “ it is a normal constituent of bones and teeth” (paragraph 11). The Consultative Council, having

examined the possible ill effects of increased fluoride intake, concludes its Report with the following unanimous recommendation:- “Having considered all the information available to it on the relationship between fluorine and dental decay the Council is satisfied that an increased intake of fluorine will reduce the incidence of dental caries and that it is desirable to provide for such an increased intake. The Council is further satisfied that the increased intake of fluorine can best be provided by the fluoridation of public water supplies to the level of 1·0 part per million F.”

10. The plaintiff's originating plenary summons, naming the Attorney General as defendant, was issued on the 1st June, 1962, and the action was at hearing before Mr. Justice Kenny for 65 days in the months March to July, 1963. The plaintiff resides at Grace Park Road, Drumcondra, in the City of Dublin with her husband and their five children, born in the years 1950, 1952, 1956, 1959 and 1960, respectively. Her house is connected with the public piped water supply of the Dublin Corporation, and there is no alternative water supply for drinking and cooking. The nearest un piped water supply is about three miles distant at Ballymun in the County of Dublin.

11. The plaintiff in her evidence said that she was aware that fluorine in public water supplies was intended to protect against dental caries [in children]. With regard to protecting her children against dental caries she said she believed sound nutrition was very important, and that she and her husband attended to their children's diet, which consisted of one hundred per cent wholemeal bread, cheese, honey, walnuts, and an abundance of fruit and vegetables. In addition, they did not encourage their children to eat sweets, lollipops or ice cream, and they never had soft drinks except on Christmas Day. The plaintiff further said that she objected to the putting of fluorine into the public water supplies because she considered it an infringement of her parental rights, and that it was her function to see to the children's upbringing and to decide what they should have to eat and drink and all other aspects of their upbringing. Her objection as an individual was that it was an infringement of her own personal integrity. She added that if she considered that she needed medicine she went to the doctor and asked him and he would consider her case as an individual and give her the dosage he would feel right. In cross-examination she said that the putting of fluorine in the public water supply was medication in the case of children, and while it was not intended to do anything for adults she objected to it because she felt it might harm herself. She said her objection was very strong, and she had very definite views about the upbringing of children. Asked about the condition of her children's teeth, it appeared that her first child had 6 damaged teeth and 3 filled; the second child, 4 decayed teeth; the third child, five first teeth decayed or showing some signs of caries. She, however, explained that these children did not

at first have the benefit of the diet they now have. The teeth of the two youngest children (aged 3 and 4 respectively), who had this diet from the beginning, were absolutely perfect.

12. In addition to the plaintiff's testimony there was a mass of scientific and medical evidence from an array of experts, summoned both by the plaintiff and by the defendant, and the scientific literature dealing with the subject of fluoridation over the last 30 years was referred to and analysed by the witnesses.

13. The plaintiff's claim, put in general terms, rested on a submission that the fluoridation of public water supplies in accordance with the Act constituted a violation of her personal rights and the personal rights of her children, under Article 40. 3, of the Constitution; a violation of the authority of the family, under Article 41; and a violation of the family's right of physical education of children, under Article 42. Mr. Justice Kenny rejected all three submissions and, in addition, held that the plaintiff's action also failed on two other grounds, (i) that she had no contractual right to a public water supply, and (ii) that, in any event, a citizen who objected to fluoridated water could, by the expenditure of a few pounds, remove all, or almost all, the fluoride ions from the water coming through the piped water supply.

14. The Attorney General has said in this Court that he did not rely upon the submission that the plaintiff had no contractual right to a public water supply and that, though pleaded, he had not relied upon it in the High Court. He did, however, support the correctness of the trial Judge's view. Mr. Justice Kenny in his judgment acknowledged that this approach might be too legalistic and too narrow. It was accepted by the Attorney General that water is one of the essentials of life, and that man therefore has an inherent right to it. In the opinion of this Court it is wholly unrealistic to say to a resident in a city the size of Dublin, who objects to using the public piped water supply, that he can avail of alternative supplies. The answer to the question, whether or not a citizen's constitutional rights have been infringed by the kind of water provided by the public water supply, should not be controlled by technical limitations arising from the law of contract. As to the second ground, that the plaintiff's action failed because she could by a simple and inexpensive device fitted to the family tap remove from the water the fluoride ions whose presence are objected to, it is enough to say this ground was not relied upon by the Attorney General in his defence, and this Court would require a fuller examination than has been given to the matter in the evidence of Dr. Fremlin before accepting it as affording, by itself, a satisfactory answer to the plaintiff's claim. The Court therefore considers it its duty, as did Mr. Justice Kenny, to examine the plaintiff's challenge to the validity of the Act in the light of the several

articles of the Constitution which have been invoked.

15. Before turning to this branch of the case it is, however, necessary to prefix certain general observations with regard to the nature of this present action. The constitutionality of a statute is, in many instances, determinable by a consideration and interpretation of the terms of the statute itself without reference to evidence as to their meaning or effect. Any matters necessary to elucidate its scope in such cases are matters of which the Court can take judicial notice. In the case of this Act, however, the Court is considering a statute which uses scientific terminology, deals with a scientific procedure and requires scientific knowledge to comprehend the effect of its provisions. These are not matters which are presumed to be within the knowledge of the Court, and, accordingly, the unconstitutionality of the Act, if it be unconstitutional, cannot be determined except by reference to the particular evidence which is furnished in the case. Since evidence may differ from case to case and as scientific knowledge may increase and the views of scientists alter, the Court's determination cannot amount to more than a decision that on the evidence produced the plaintiff has, or has not, discharged the onus of demonstrating that the Act is unconstitutional. It is of importance that attention should be called at the outset to this aspect of the present case.

16. The scientific evidence indicates that fluorine is the name of one of the chemical elements which, in combination with other elements, is widely distributed throughout the crust of the earth. In its pure form, uncombined with other elements, it is a gas consisting of molecules each of which is formed by two atoms with a neutral electrical charge. This gas does not occur naturally, except perhaps in small quantities in vent holes of volcanoes, but it can be produced in the laboratory by a somewhat complicated technique.

17. The neutral atom of fluorine, is, however, subject to ionisation, that is to say, to the addition of an extra electron to its shell, giving it a negative electrical charge. In this form it is known as an ion, and can and does exist as a free entity. Fluorine ions (more usually called fluoride ions), in varying concentrations, are naturally present in many, perhaps in most, natural waters. Where they are not present they can be supplied by the addition to the water of any one of a number of chemical salts of fluorine which, when they are dissolved in a weak concentration, liberate free fluoride ions into the water. The process of adding such ions is known as fluoridation.

18. The free fluoride ion, whether contained in water or in other substances such as tea leaves, fish or vegetables, is readily ingested by the human body. When it finds its way to the teeth of children, as it does, it enters into a combination with the nascent enamel and has the effect of

delaying and, to a certain degree, of avoiding the onset of dental caries, one of the most prevalent of human ills. The object of fluoridation of water which is deficient in fluoride ions is to add enough of those ions to ensure that children who drink the water will ingest sufficient ions to afford a measure of protection of their teeth.

19. It is also necessary to note a change in terminology which might create confusion in the interpretation of the statute and the evidence. In the earlier literature (and even at the present time in books on inorganic chemistry) it is customary to use the expression "fluorine" ion, but modern biochemistry prefers the term "fluoride" ion, and often shortens this to "fluoride" without adding the word, "ion." The meaning is identical - the fluorine atom in its ionised form. The Report on the United Kingdom Mission on the Fluoridation of Domestic Water Supplies in North America, para. 37, states that the term "fluoridation" has been adopted expressly instead of "fluorinization" to make clear that the fluorine is added in the form of the fluoride ion. The Court has adopted in this judgment the term "fluoride" ion which is now the more usual terminology and which was adopted by Mr. Justice Kenny instead of the older terminology of "fluorine" ion. Nowhere in the evidence was it suggested that fluorine could be added to water supplies in the form of fluorine gas or in the form of the un-ionised fluorine atom.

20. It will be convenient to deal separately with the three articles of the Constitution upon which the plaintiff rested her submission that the Act is repugnant to the Constitution.

21. Article 40, 3, paras. 1 ° and, 2°, are as follows:-

"3. 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."

22. Of the further sections of this Article, section 4 protects personal liberty, section 5 the inviolability of the dwelling-house, section 6 freedom of expression, the right of peaceable assembly and the right to form associations or unions. These latter rights are expressly qualified in various ways. The Court agrees with Mr. Justice Kenny that the "personal rights" mentioned in section 3, 1° are not exhausted by the enumeration of "life, person, good name, and property rights" in section 3, 2° as is, shown by the use of the words. "in particular"; nor by the more detached treatment of specific rights in the subsequent sections of the Article. To

attempt to make a list of all the rights which may properly fall within the category of “personal rights” would be difficult and, fortunately, is unnecessary in this present case.

23. It was Mr. MacBride’s contention that among the personal rights of the individual is to be included a right to what he called “bodily integrity,” and this the Attorney General intimated he was prepared to concede in the words, “a right to the integrity of the person.” Neither counsel offered the Court any assistance as to what the limits of this right to bodily integrity were. Mr. Justice Kenny held that a right to bodily integrity was, among the personal rights guaranteed by the Constitution, and he sought to define the right in these words:- “ I understand the right to bodily integrity to mean that no mutilation of the body or any of its members may be carried out on any citizen under authority of the law except for the good of the whole body and that no process which is or may, as a matter of probability, be dangerous or harmful to the life or health of the citizens or any of them may be imposed (in the sense of being made compulsory) by an Act of the Oireachtas.” Mr. MacBride, however, says that the Judge’s definition is too narrow and he contends that any interference with bodily constitution is a violation of the right. However, for the reasons which hereinafter appear it is unnecessary to define “bodily integrity” or the “right to the integrity of the person” or to consider to what degree and in what circumstances the State might interfere with the right, whether for the benefit, of the individual concerned, the common good, or by way of punishment. The Court is not, pronouncing upon Mr. Justice Kenny’s definition.

The interference to which Mr. MacBride points in this branch of his argument is the effect which the fluoridation of water will have at a concentration of 1 p.p.m.F. His complaints fall under two heads: (i) the deposition of some of the fluoride ions ingested in the bones of the body, and (ii) the mottling which it may cause to tooth enamel. He referred to the process of fluoridating water as “mass medication” and submitted that the State cannot administer “drugs” through water.

24. It is necessary to refer to the trial Judge’s findings on these two matters:-

(i) “Some of the fluoride ion ingested is deposited in the skeleton and some is excreted; about one-third to one-half of the fluoride ion ingested is deposited quickly in the skeleton and is thereby taken out of circulation in the human body. . . . When the water contains less than 5 p.p.m. of the ions, the evidence is coercive that it does not cause any osteosclerosis or osteoporosis If it is assumed that one-third to one-half of the fluoride ion ingested is deposited in the skeleton (and I think that the evidence supports this view), a person aged seventy who had been drinking water fluoridated at the concentration of 1 p.p.m. all his life would have a concentration of about 4,000 p.p.m. of the fluoride ion in his skeleton at

that age. I am satisfied that this concentration of 4,000 p.p.m. does not produce any harmful results and does not involve any hazard. This is confirmed by the animal studies which were described in great detail in this case. In some of these, water with a concentration of 50 p.p.m. of the fluoride ion was given for seven months to pigs and for eleven months to dogs and no skeletal changes were found at the end of those periods. The evidence also establishes that the deposition of the fluoride ion increases with age so that the bone samples taken from old people show an increased concentration of it caused by the presence of the fluoride ion in water. I am satisfied that a concentration of 1 p.p.m. of the fluoride ion in the water, though it produces an increase in the concentration of the ion in the bone by a gradual process, does not involve any risk of damage to life or health for anybody, young or old.”

(ii) “If the water in Ireland is fluoridated to a concentration of 1 p.p.m., ten per cent of the children will develop mild, and very mild mottling of their teeth. Dr. Galligan distinguished between disfiguring mottling and mild and very mild mottling. I accept the view that the mottling of the teeth of ten per cent of the children in Ireland will not be an indication of fluorosis or of any damage or harm having been done to the children’s teeth by the fluoride ion in the water which they have drunk. This mild and very mild mottling is not a condition which will be perceptible by most people indeed, Dr. Galagan suggested that mild and very mild mottling might improve the appearance of the teeth. I am, however, satisfied that the mild and very mild mottling which will be produced in the teeth of some children is not an indication of any element of risk to health or of dental harm or damage to any of the children who get it.”

(iii) “Throughout the case the plaintiff’s counsel sought to establish that the fluoridation of water at a concentration of 1 p.p.m. involved ‘a dangerous dosage’ of human beings with the fluoride ion. The first step in this argument was to establish what dose of the fluoride ion would be dangerous; the next step was an attempt to establish that the total amount of the fluoride ion taken in the food, in some drugs, and in the air, when added to the ingestion of water with a concentration of 1 p.p.m., would amount to a dangerous dose. Strong reliance was placed on the quantity of the ion which is in tea and also on the fact that when a kettle of water is allowed to boil, some of the water will evaporate while the ion will not and it was argued that this would cause an increase in the concentration of the fluoride ion. It was also submitted that the Oireachtas is not entitled to take a risk with the health of the citizens and that a concentration of 1 p.p.m. in the water would, when taken with the other sources of the fluoride ion, involve a risk. I am convinced that the amount of the fluoride ion ingested at a concentration of 1 p.p.m. in the water together with the amount of the ion in the food, in drink, in the air and in drugs (in so far as we know it) does not involve any element of danger or risk to health.”

25. To these findings should be added Mr. Justice Kenny's earlier findings:-

"Having heard the evidence and read the literature which it was agreed I should read, I am satisfied that the fluoridation of the public water supplies at the concentration of 1 p.p.m. will not, in our temperate climate, be dangerous to anybody, old, young, healthy or sick. I am also satisfied that there is no reasonable possibility that it may involve an element of danger or risk to life or health to any of the citizens of this country."

"It would, I think, be sufficient for the purposes of this case to say that the plaintiff has not proved that the fluoridation of the, public water supply is dangerous but I do not think that I should so confine myself. The evidence given on behalf of the plaintiff at the earlier stages in this case received wide publicity while the far more compelling evidence for the defendant received little public notice. It is possible that the evidence for the plaintiff, some of which was of a sensational character, may have created public uneasiness. Let me say then that I am satisfied beyond the slightest doubt that the fluoridation of the public water supplies in this country at a concentration of 1 p.p.m. will not cause any damage or injury to the health of anybody, young, old, healthy or sick who is living in this country and that there is no risk or prospect whatever that it will. The evidence on which I base this view consists of a number of separate items each of which is conclusive; when taken together, they are overwhelming."

26. Having read the oral evidence and the documents submitted, this Court is satisfied that these findings are correct and cannot be challenged.

27. The basis for the plaintiff's complaint that bodily integrity has been violated rests on the probability of mild or very mild mottling in the teeth of up to 10 per cent of the children who drink the fluoridated water and on the small deposition of fluoride ions in the skeletal frames of both children and adults. Neither of these effects is harmful or involves any risk to health. The effect on the teeth is demonstrably beneficial. The purpose and effect of fluoridation is to improve children's teeth and so, indirectly, their health. These benefits to a great extent are carried forward into adult life. Adults by ingesting fluoridated water obtain little or no advantage, but neither do they suffer any disadvantages.

28. Are these minute changes, almost imperceptible, usually beneficial, and at worst harmless, a violation of "bodily integrity"?

29. The Court's answer is emphatically, "no." Fluoride ions occur naturally in water and in many foods. They have a beneficial effect in assisting in the formation of sound teeth in children. The Act has for its object where water is deficient in fluoride ions to bring it to the optimum level by fluoridation. Fluoride ions thus added, the evidence establishes, differ in

no respect from fluoride ions naturally occurring in water. In modern life the provision of public water supplies in cities is necessarily a community obligation, and if water occurring naturally is deficient in some of its wholesome elements it is the right, if not the obligation, of the community to make good the deficiency where this can be done without harm or danger to the public. The desirability of adding to food or water elements in which they are deficient or removing elements which may be harmful has been widely recognised and frequently exercised. Water is chlorinated, salt iodised, vitamins added to margarine, flour fortified whenever these measures are shown to be beneficial.

30. It is beyond question that dental caries in children has become a national problem in this State. The fact that as a disease it is not infectious or contagious or, apparently, otherwise communicable to other persons is immaterial. It can result not merely in damage to the teeth themselves but, through the existence of decayed or decaying teeth, may be injurious to general health. The State is organised for the common welfare of all its citizens and is a society arising from man's nature. Apart from particular expressed limitations contained in the Constitution, the Oireachtas may not enact legislation depriving citizens of their essential rights as human persons or as members of the family. The State has the duty of protecting the citizens from dangers to health in a manner not incompatible or inconsistent with the rights of those citizens as human persons.

31. Dental caries is no new thing. It has adversely affected generation after generation and will continue to do so if measures are not taken. This constitutes the type of danger from which the State has not merely the right but the duty to protect its citizens. To deal with the problem the Oireachtas has chosen a method, namely, the fluoridation of the public water supply. The plaintiff has failed to refute the evidence that this is not only the most effective method but is indeed the only effective method. The method undoubtedly does result in a minimal interference with the constitution of the body, but such interference is not one which in any way impairs the functions of the body or, to any extent discernible by the ordinary person, its appearance.

32. The Court is left in no doubt that the fluoridation of water to the extent proposed in the Dublin Health Authority area where the plaintiff resides cannot be said to involve physical changes which affect in any way either the wholeness or the soundness of the body of the person concerned. The ingestion of the fluoridated water cannot, therefore, be said to constitute an infringement of or a failure to respect (gan cur isteach ar) the bodily integrity of the plaintiff or the bodily integrity of her children.

33. The Court does not accept that the fluoridation of water is, or can be

described as, the mass medication or mass administration of “drugs” through water. It has already been pointed out that the fluoridation is a process by which an element which naturally occurs in water is, in the case of a particular water supply, raised to a level of concentration at which it is found in wholesome water and that the fluoride ions thus added are not, different in nature, or action from the fluoride ions occurring naturally in water. This matter was examined in detail by the Commission set, up by the Government of New Zealand to enquire into “the Desirability or otherwise of the Fluoridation of Public Water Supplies” and the conclusion was reached that “fluoride is not a drug but a nutrient and fluoridation is a process of food fortification.” It is, in the opinion of the Court, a misuse of words to refer to this process as mass medication or mass administration of drugs.

34. Next, the plaintiff submits that the provisions of the Act are a usurpation of parental authority as guaranteed under Article 41, 1:-
“1. 1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.
2° The State, therefore, guarantees to protect the Family, in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.”

35. The plaintiff’s submission was put under two heads: (a) that the State has no right at all to interfere in the exercise of the parental authority, and (b) in the alternative, that the Act amounts to an undue interference with parental authority. The aspect of that authority which is in question is the authority of the family or the parents to provide for the health of its members in the way it thinks best. It is sought to establish, as a corollary, that parents are entitled to omit to provide for the health of their children if they so think fit. One of the duties of parents is certainly to ward off dangers to the health of their children, and in the Court’s view there is nothing in the Constitution which recognises the right of a parent to refuse to allow the provision of measures designed to secure the health of his child when the method of avoiding injury is one which is not fraught with danger to the child and is within the procurement of the parent. The nature of the health problem here involved and the effectiveness of the means available for, dealing with it have already been referred to. There is nothing in the Act which can be said to be a violation of the guarantee on the part of the State to protect the family in its constitution and authority.

36. Thirdly, the plaintiff invoked the provisions of Article 42 of the Constitution, claiming that the legislation under review constitutes a violation of the inalienable right of the parents to provide for the physical

education of their children. The relevant provisions of Article 42 are as follows:-

“42. 1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.
2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.”

37. Mr. MacBride contends that the provision of suitable food and drink for children is physical education. In the Court's view this is nurture, not education. Education essentially is the teaching and training of a child to make the best possible use of his inherent and potential capacities, physical, mental and moral. To teach a child to minimise the dangers of dental caries by adequate brushing of his teeth is physical education for it induces him to use his own resources. To give him water of a nature calculated to minimise the danger of dental caries is in no way to educate him, physically or otherwise, for it does not develop his resources.

38. This ground of appeal also fails.

39. It remains to consider what Mr. MacBride described as his two “technical points” on the Act. Mr. MacBride's first point was based upon the terms of the definition of “fluoridation” in s. 1 of the Act, viz., “fluoridation includes the addition of fluorine in any form.” Mr. MacBride says, correctly, that the element fluorine can be found in organic compounds (that is to say, compounds in which carbon is present), both in compounds naturally occurring in the dicapetalum family of plants found in certain parts of Africa and in compounds which can be produced in laboratory synthesis. He says also, and again correctly, that such organic compounds are highly toxic. From this he argues that the Act authorises the addition of highly poisonous organic compounds to water. Such evidence as is contained in the documents incorporated in the case indicates that such organic compounds are not and cannot be sources of the fluoride ion, and that their poisonous properties are due not to the action of the fluoride ion but to the action of the compound molecules of which they are formed. It is not anywhere suggested that their addition to water liberates fluoride ions, or could have the slightest effect on dental caries, or that anyone has ever contemplated using them as an addition to water. On the other hand, there is accepted and undisputed evidence that a large number of inorganic salts of fluorine (calcium fluoride, sodium fluoride, sodium silico fluoride, apatites, fluorapatite, etc.) when dissolved in water do release the fluoride ions and that the process of fluoridation consists in adding such compounds in appropriate quantities. The Act deals with a technical and scientific subject, and must be construed in the

light of the scientific and technical knowledge which has been put before the Court. Its admitted object is to decrease the incidence of dental caries by the addition to water of fluorine in the form of the fluoride ion, the correct meaning of fluoridation. Despite the wide and somewhat loose wording of the definition it cannot be doubted that the word "fluoridation" is to be given its technical and scientific meaning, except in so far as this is clearly and expressly modified or extended by the wording of the definition, and that the extension by the words "fluorine in any form" must be read as "the fluoride ion as contained in or produced by any form of chemical substance." The reference is clearly intended to apply only to those numerous forms of inorganic compounds which when added to water make available the free fluoride ion or fluorine ion (if that terminology be adopted).

40. Mr. MacBride's second point was taken on the terms of s. 2, sub-s. 3 (a), of the Act. The regulations made by the Minister, the section says, "shall in particular provide for the specification of the amount of fluorine (which shall not exceed one part by weight of fluorine per million parts of water) which may be added to a water supply." This means, Mr. MacBride submitted, that the Minister may authorise the addition to any existing water supply of 1 p.p.m.F. no matter what its natural fluoride content may already be.

41. The Court entertains no doubt that the section plainly bears the meaning which Mr. MacBride puts upon it and can bear no other meaning. Mr. MacBride referred to the provision as "an error in drafting." The Consultative Council set up by the Minister to advise on the expediency of the fluoridation of water recommended "the fluoridation of public water supplies to the level of 1·0 parts per million," that is to say, fluoridation which would bring the fluoride content up to 1·0 part per million; and, indeed, the great weight of medical and scientific opinion fixes the optimum fluoride content of water for countries, like Ireland, in the temperate zone at 1 p.p.m. The Minister has already caused to be made analyses of the water supplies of ten counties. These analyses show that in nearly all the supplies the fluoride ion is either entirely absent or is present in such minute quantities as do not call for consideration. At Gyles Quay in Co. Louth, however, there is a concentration of ·55 parts per million; and at Patrickswell, a village in Co. Limerick, a concentration of 1·0 per million. Mr. MacBride says that, for all we know, greater concentrations may be found in waters still unanalysed. This point on the construction of the statute was one which Mr. MacBride made in his opening address in the High Court and again in his closing submissions. But in the case presented on the plaintiff's behalf over a period of several weeks by a large number of expert witnesses evidence was not expressly directed to the effects of consuming water of a concentration of 2 p.p.m.F.

or to the more theoretical problems arising from the addition of 1 p.p.m.F. to waters (if such should be discovered in Ireland) of greater natural fluoride concentration than 1 p.p.m. There are incidental references to the matter, as for example (i) that at this concentration a very small proportion of children ingesting the water might develop a faint brown marking which would be discernible by an ordinary person and might be sufficient to impair the appearance of a young girl; (ii) Dr. Ericsson's statement that he found no objectionable mottling at 2 p.p.m.F. ; and (iii) Dr. Arnold's opinion that even from the aesthetic point of view he would be willing to bring up his children on water fluoridated to the extent of 2.5 p.p.m. There is no evidence that a concentration of 2 p.p.m.F. in water is injurious to health.

42. This Court, however, cannot now consider a case which the plaintiff did not make in evidence, and did not make for the reason (one supposes) that her concern was with the proposed fluoridation of the Dublin Corporation water supply to an extent which, at its maximum, would bring its fluoride content to 1 p.p.m. The trial Judge in a very full survey of the evidence made no finding upon the point. He was not asked to make a finding. Indeed, it may be said that the matter was passed over in such a way at the trial that he could not have been asked to make a finding and, in truth, he was not furnished by the plaintiff's witnesses with the material for making a finding. This Court must therefore decline to offer any opinion upon this last matter. The plaintiff has failed to lay the ground in evidence for an examination of the problem. If the question ever assumes practical importance it will be open to investigation in future proceedings.

43. The Court has no concern with the legislative policy of the Oireachtas. Its function is only to examine the statute in which that policy is embodied and to see if its provisions contravene the provisions of the Constitution. There is a presumption that a statute is constitutional and the onus of showing that it is unconstitutional rests on the plaintiff who attacks it. Where on the face of the statute nothing unconstitutional appears and the attack is based on its alleged effect, and the conclusion as to the effect has to be based on evidence of a disputed character, a plaintiff must fully satisfy the Court that its effect is such as he contends. In the view of the Court the evidence given in this case shows that a concentration of one part per million is not deleterious, and is insufficient to show that a concentration of two parts per million is deleterious.

44. For the reasons stated this appeal fails.

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