



UCD Constitutional Studies Group
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A Guide to the referendum on the 30th Amendment to the Constitution

What is the proposed amendment about?

The amendment is designed to reverse the effects of the decision of the Supreme Court in the so-called 'Abbeylara' case (Maguire v. Ardagh [2002] I.R. 385).

What was the Abbeylara case about?

In April 2000, Mr. John Carthy was shot dead by members of An Garda Síochána at a house in Abbeylara, Co. Longford.

This followed an incident in which he had taken his legally held shotgun from a locker in their home, loaded it and fired two shots from the front door. In response to a call, Gardaí went to the location. There followed a period of negotiations between the Gardaí and Mr. Carthy. Those negotiations proved unsuccessful and, late in the afternoon of 20th April, John Carthy left the house. At the time that he emerged from the house, Mr. Carthy was carrying the shotgun. Shots were then fired by members of An Garda Síochána, resulting in the fatal wounding of John Carthy.

The Garda Commissioner prepared a report on the incident for the Minister for Justice, Equality and Law Reform. This report was put before the Oireachtas.

A sub-committee of 7 members of the Oireachtas was established to further consider this report and to report its conclusions. The purpose of the sub-committee was summarised by its lawyers as being to answer the question: "Was this death avoidable"? The sub-committee assumed the power to find facts and to make findings including, if appropriate, a finding of unlawful death against a Garda officer or officers.

The sub-committee indicated that interested parties could apply for permission to cross-examine anyone who gave evidence to the sub-committee. The sub-committee would decide if cross-examination would be allowed. The sub-committee also suggested that cross-examination would not take place after a witness gave evidence but would be left until towards the end of the hearings.

A number of members of An Garda Síochána who were directed by the sub-committee to attend and give evidence brought a legal challenge. Their two main arguments were:

- (i) The Oireachtas did not have a power under the Constitution to investigate, judge and make findings of fact about the actions of individual citizens.
- (ii) The sub-committee's procedures were unfair and in breach of the constitutional right to fair procedures.

What did the Supreme Court decide?

Several judges stated that, in their opinion, the Oireachtas would have a power to hold investigation and inquiries where they were relevant to the legislature's constitutional function of making laws. However, an inquiry into the behaviour of individuals which could interfere with their constitutional rights (particularly the right to a good name) was not a power which it was necessary for the Oireachtas to have to do its job under the Constitution.

The Supreme Court decided, therefore, that:

- The power to hold inquiries and make findings of fact about citizens is not an essential part of a legislature's function.
- The Oireachtas does not have a power under the Constitution to make findings of fact which can affect the constitutional rights of individual citizens.

It was therefore not necessary for the Supreme Court to make a final decision on the Gardai's second argument. Four of the judges suggested that the rules on cross-examination proposed by the sub-committee would have breached the Gardai's constitutional right to fair procedures.

What does the Constitution say at the moment?

Article 15. 10.

Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

If the People vote 'Yes, what would the Constitution say?

Article 15. 10

1° Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

2° Each House shall have the power to conduct an inquiry, or an inquiry with the other House, in a manner provided for by law, into any matter stated by the House or Houses concerned to be of general public importance.

3° In the course of any such inquiry the conduct of any person (whether or not a member of either House) may be investigated and the House or Houses concerned may make findings in respect of the conduct of that person concerning the matter to which the inquiry relates.

4° It shall be for the House or Houses concerned to determine, with due regard to the principles of fair procedures, the appropriate balance between the rights of persons and the public interest for the purposes of ensuring an effective inquiry into any matter to which subsection 2° applies.”

What are the arguments for and against?

Arguments for a 'Yes' vote	Arguments for a 'No' vote
<p>The referendum will allow the Oireachtas to hold inquiries into matters of public importance. It is difficult to do this after the Abbeylara decision.</p> <p>It is sometimes inevitable that establishing the facts of a matter of public importance will also involve a finding that damages a person's reputation.</p>	<p>The referendum is unnecessary. The Oireachtas is already entitled to hold inquiries into matters of public importance.</p> <p>The Abbeylara decision only prevents the Oireachtas from holding inquiries which may interfere with the constitutional rights of citizens by making findings of fact against them.</p>
<p>A power to hold inquiries will strengthen the powers of the Oireachtas.</p>	<p>A power to hold inquiries will allow TDs and Senators to act as judges of the behaviour of individual citizens. Decisions made by inquiries may interfere with the constitutional rights of citizens affected, including the right to a good name.</p>
<p>The original draft proposal was amended to include a specific reference to "the principles of fair procedures". The House is obliged by the amendment to have regard to these principles.</p> <p>The Government has indicated that their legal advice is that it will be possible to challenge decisions of the House or Houses in the courts.</p>	<p>Academic experts on constitutional law have suggested that the wording of the proposed subsection 4° will mean that the actions of the Oireachtas may not be subject to review by the courts. The phrase "It shall be for the House or Houses ... to determine" logically means that the decision is one for the House or Houses to make alone.</p> <p>Therefore, if a person feels that their right to fair procedures is being violated by an inquiry, they will have no way of challenging that.</p> <p>The Referendum Commission has stated that "It is not possible to state definitively what role, if any, the courts would have in</p>

	<p>reviewing the procedures adopted by the Houses.”</p>
<p>Members of the Oireachtas are the elected representatives of the People and should be entitled to investigate matters of public concern on behalf of the People.</p>	<p>Members of the Oireachtas are not best equipped to investigate and judge the conduct of others.</p> <p>Many TDs and Senators do not have experience of this. Because of their position, TDs and Senators may also be influenced, or be seen to be influenced, by the interests of their own political party or by media pressure.</p>
<p>A stronger Oireachtas will be better equipped to hold Government and other powerful bodies to account for their actions.</p>	<p>This will not lead to more accountability in Government. The Government usually has a majority on Oireachtas committees and is able to influence or control them. The Government is unlikely to allow committees to hold inquiries which could embarrass the Government.</p>
<p>The power to hold inquiries is one which most parliaments around the world have.</p>	<p>The Supreme Court decided in <i>Abbeylara</i> that this is not a necessary power for a parliament to have. Some parliaments do not have this type of power.</p> <p>In many countries where the power to hold inquiries exists, the decisions of the inquiries can be reviewed by the courts. That may not be possible with this proposal.</p>
<p>The power to hold inquiries has been used effectively in other countries.</p>	<p>The power to hold inquiries has been misused in some countries to scapegoat individuals, or for the benefit of political parties.</p>
<p>A power to hold inquiries will mean that there will be less need to have tribunals of inquiry in the future.</p>	<p>Tribunals of inquiry were not established because of a lack of power to hold parliamentary inquiries.</p>

	<p>Many of the recent tribunals were set up before the Abbeylara decision in 2002 when it was thought that the Oireachtas was able to hold its own inquiries.</p>
<p>Parliamentary inquiries may investigate matters of public concern more quickly than tribunals of inquiry.</p>	<p>Parliamentary inquiries are not the only alternative to tribunals of inquiry. The system set up by the Commissions of Investigation Act 2004 has operated successfully so far (for example the Murphy Report into the handling of complaints of child sex abuse by the Dublin Archdiocese).</p> <p>Under the proposed referendum, it will be for the House or Houses to decide how long an inquiry will last. There is no guarantee that they will conclude in a short period of time.</p>
<p>Parliamentary inquiries may investigate matters of public concern more cheaply than tribunals of inquiry.</p> <p>Tribunals of inquiry have been a very expensive way of investigating matters of public importance.</p>	<p>Parliamentary inquiries are likely to incur costs. The inquiry is likely to have its own staff and advisers, including legal advisers.</p> <p>It cannot be assumed that Oireachtas inquiries will be cheaper than alternative options, such as a Commission of Investigation.</p>