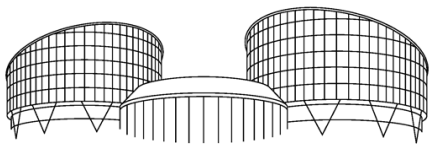

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 50272/18
Róisín SHORTALL and Others
against Ireland

The European Court of Human Rights (Fifth Section), sitting on 19 October 2021 as a Chamber composed of:

Mārtiņš Mits, *President,*
Síofra O'Leary,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*

and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged with the Court on 11 October 2018;

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by the Ordo Iuris Institute for Legal Culture who were granted leave to intervene by the President of the Section;

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

2. Before the Court all of the applicants were represented by Mr C. MacGeehin, a lawyer practising in Dublin.

3. The Government were represented by their Agent, Mr B. Lysaght, of the Department of Foreign Affairs and Trade.

The circumstances of the case

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. Pursuant to Articles 12.8 and 31.4 of Bunreacht na hÉireann (the Constitution of Ireland), persons taking up office as President of Ireland or as members of the Council of State, a body advising the President on the exercise of his or her powers must make a declaration "in the presence of Almighty God" (see paragraphs 15 and 16, below).

6. Each of the applicants believed that they were entitled to aspire to the Presidency of Ireland (see paragraph 13, below) or to membership of the Council of State, but claim that the religious elements of the declarations required by the Constitution would either prevent them from taking up these offices or require them to make a religious declaration against their conscience.

7. The first applicant, Ms Shortall, has been an elected member of Dáil Éireann (the lower house of the Oireachtas or Parliament) for twenty-eight years, successfully contesting seven elections. She currently serves as joint leader of the Social Democrats. She declares herself to be agnostic.

8. The second applicant, Mr Brady, is a member of Sinn Féin. He served as a local politician from 2004, he was elected to Dáil Éireann in 2016 and re-elected in 2020. He currently serves as a senior spokesperson for his party in Dáil Éireann.

9. The third applicant, Mr Finlay, a member of the Labour Party, served a senior role in several Presidential elections and referendum campaigns. He has also served as chief executive of Barnardo's, a children's charity. He is "a lifelong humanist", with no religious affiliation. In 2011 he sought his party's nomination to contest the Presidency, but his colleague, Mr Higgins, secured that nomination and was elected as President. In 2018, Mr Higgins sought re-election and the third applicant did not seek his party's nomination.

10. The fourth applicant, Mr McConnell, has no declared party affiliation. He is a member of the Humanist Society of Ireland and served as Honorary President of the society in 2009. He has also served as Chairman of the board of directors of a hospital and Chairman of the Board of Trustees of the *Irish Times,* a prominent national newspaper. He currently serves as a professor of genetics and a senior administrator in Trinity College Dublin, having previously served as Registrar, Vice-Provost and Vice-Chancellor.

11. The fifth applicant, Mr Norris, has served as an independent member of Seanad Éireann (the upper house of the Irish Oireachtas) since 1987. In 2011 he secured the support of four local authorities and ran unsuccessfully for election to the Presidency.

RELEVANT LEGAL FRAMEWORK

A. Relevant domestic law

1. Bunreacht na hÉireann ("the Constitution")

12. The Constitution of Ireland was enacted on 1 July 1937 and has been in operation since 29 December 1937. The Constitution contains a number of explicit religious references in the Preamble and elsewhere.

13. Article 12.1 of the Constitution provides for the office of Uachtarán na hÉireann (the President of Ireland) to take precedence over all other persons in the State, acting, in effect, as head of state, and exercising certain functions conferred on him or her under the Constitution. Articles 12.2 and 12.3 state that the President shall be elected by a direct vote of the people and may serve two terms, excluding his or her death, resignation or incapacity. The last presidential election took place in 2018. If the current president serves a full second term, the next election will take place in 2025.

14. Under Article 12.4.1º any Irish citizen who has reached thirty-five years of age is eligible for election to the Presidency. Under Article 12.4.2º every candidate for election, save a former or retiring President, must be nominated either by twenty members of the Houses of the Oireachtas or by the Councils of at least four administrative Counties ("local authorities") in order to run for election.

15. Article 12.8 states:

> "The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of the Oireachtas, of Judges of the Supreme Court, of the Court of Appeal and of the High Court, and other public personages, the following declaration:
>
> 'In the presence of Almighty God I do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland and uphold its laws, that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and the law, and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me.'"

16. Article 31.1 of the Constitution provides for a Council of State to aid and advise the President on the exercise of his or her powers. Articles 31.2-31.4 state:

> "2 The Council of State shall consist of the following members:
>
> i. As *ex-officio* members: the Taoiseach [Prime Minister], the Tánaiste [Deputy Prime Minister], the Chief Justice, the President of the Court of Appeal, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney General.
>
> ii. Every person able and willing to act as a member of the Council of State who shall have held the office of President, or the office of Taoiseach, or the office of Chief Justice, or the office of President of the Executive Council of Saorstát Éireann.

iii. Such other persons, if any, as may be appointed by the President under this Article to be members of the Council of State.

3 The President may at any time and from time to time by warrant under his hand and Seal appoint such other persons as, in his absolute discretion, he may think fit, to be members of the Council of State, but not more than seven persons so appointed shall be members of the Council of State at the same time.

4 Every member of the Council of State shall at the first meeting thereof which he attends as a member take and subscribe a declaration in the following form:

'In the presence of Almighty God I do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfil my duties as a member of the Council of State.'"

17. Article 44.2 of the Constitution provides:

"1° Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2° The State guarantees not to endow any religion.

3° The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status."

18. Article 46.2 of the Constitution states:

"1 Any provision of this Constitution may be amended, whether by way of variation, addition, or repeal, in the manner provided by this Article.

2 Every proposal for an amendment of this Constitution shall be initiated in Dáil Éireann as a Bill, and shall upon having been passed or deemed to have been passed by both Houses of the Oireachtas, be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum."

2. Domestic proposals for reform of Articles 12.8 and 31.4

19. In 1995 the Government established a Constitution Review Group to carry out a comprehensive review of the Constitution. The Group's report, published in 1996, noted criticisms made by the United Nations Human Rights Committee ("the UNHRC") of the religious element of these articles (see paragraphs 26-28, below) and recommended that Articles 12.8 and 31.4 be amended to allow either a declaration or a non-religious affirmation.

20. In 1997, the All Party Oireachtas Committee on the Constitution was established to examine constitutional reform. The third progress report of the Committee, published in 1998, addressed the office of President, again noting the concerns of the UNHRC, and proposed amendments to Articles 12.8 and 31.4 to allow the President and members of the Council of State to omit the religious language contained in their respective declarations.

21. In 2012, the Constitutional Convention was established to discuss potential changes to the Constitution. The Convention had 100 members, including elected politicians from Ireland and Northern Ireland and

66 ordinary citizens. In 2014, six serving members of the Council of State, acting in their individual capacity, made a submission to the Convention criticising the religious element of the declarations required by Articles 12.8 and 31.4. The Convention's final ballot in February 2014 identified five areas of constitutional reform to be considered by the Government, including the secularisation of the Constitution and the removal of the religious elements of the declarations, but made no accompanying recommendation for a Constitutional amendment.

22. In May 2021, the serving President of Ireland, Michael D. Higgins, called for the declaration required by Article 12.8 to be removed and replaced with a non-religious affirmation.

23. As regards recent changes in relation to religious oaths and affirmations in Irish law more generally, the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 provides that witnesses will no longer be required to indicate their religious faith when filing an affidavit. Under the new legislation, jurors and witnesses giving evidence *viva voce* in court would still be required to swear a religious oath or make an affirmation.

24. The bill, when published, was welcomed by the President of the Law Society, who stated, however, that "the oath-based system should be replaced entirely, to reflect the diversity and inclusivity of Ireland today".

B. Relevant international law

1. The International Covenant on Civil and Political Rights

25. The International Covenant on Civil and Political Rights ("ICCPR") was adopted by the General Assembly of the United Nations in Resolution 2200 A (XXI) of 16 December 1966, came into force on 23 March 1976 and ratified by Ireland in 1989. Article 18 of the Covenant states:

> "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
>
> ...."

2. Ireland's engagement with the UNHRC

26. The ICCPR is monitored by the United Nations Human Rights Committee ("UNHRC"). In 1992, Ireland submitted its initial report on the

implementation of the ICCPR. In 1993, the UNHRC published a response; under the heading "Principal subjects of concern", the UNHRC stated:

> "The Constitutional requirement that the President and judges must take a religious oath excludes some people from holding those offices."

27. In 2014, the UNHRC published its response to Ireland's fourth periodic report under the ICCPR. The UNHRC expressed concern at the lack of progress in amending the requirement under Articles 12 and 31 for those officeholders to take "religious oaths" and recommended that the State take "concrete steps" to amend those articles.

28. In September 2019, Ireland submitted its fifth periodic report under the ICCPR. On 14 January 2021, the UNHRC sought further information on various issues, including as to whether there had been any changes "to the constitutional provisions requiring persons who take up certain senior public positions to take religious oaths".

3. Brief comparative overview regarding religious oaths and affirmations

29. According to the information available to the Court, the majority of the 47 member states of the Council of Europe do not make use of religious language in oaths or affirmations for senior public office-holders such as head of state, heads of government or members of parliament. In most Council of Europe states where such language is used, its inclusion is either discretionary, or provision is also made for a non-religious oath or affirmation. The only exceptions are the Constitution of Romania, which requires an oath with religious elements for the offices of President, Prime Minister and members of the Government; the Constitution of Georgia which requires an oath with religious elements for the office of President, the Constitution of Liechtenstein, which requires an oath with religious elements for members of the Diet and of the Government, and the Constitution of San Marino which requires a religious oath for the office of Captains Regent.

COMPLAINTS

30. The applicants complained that the religious language contained in both the declaration to be made by the President of Ireland upon being elected and entering office under Article 12.8 of the Constitution and the declaration to be made by persons appointed to be members of the Council of State under Article 31.4 of the Constitution, and the absence of any alternative secular affirmation, breached their rights under Article 9 of the Convention.

THE LAW

31. Article 9 of the Convention provides as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The Government

32. The Government submitted that none of the applicants could properly be regarded as a victim of any violation of Article 9 § 1 and that their application must be deemed inadmissible. The applicants were not directly affected by any violation of Article 9 of the Convention, they were claiming a violation *in abstracto,* and their application was a form of *actio popularis*. The Government referred to the position of the Court as regards such complaints, as set out in *Albert and Others v. Hungary* [GC], no. 5294/14, § 120-121, 7 July 2020 and *Burden v. the United Kingdom* [GC], no. 13378/05, § 34, ECHR 2008 (see paragraphs 46-47, below).

33. The Government submitted that the applicants' aspirations to the Presidency and to membership of Council of State did not distinguish them from the very many other persons eligible for either office. Unlike the applicants in *Buscarini and Others v. San Marino* [GC], no. 24645/94, ECHR 1999-I, who, after election to parliament, were required to take a religious oath or forfeit their office, no applicant had been elected to the Presidency, no applicant had been required to make the declaration under Article 12.8, no applicant had sought that office in 2018 and no applicant had expressed a clear intention to run in the next election. The Government provided correspondence from the applicants' current legal representative to the Attorney General, dating from 2017, wherein Mr McGeehin stated that the fifth applicant did not object to making the declaration required by Article 12.8. Equally, none of the applicants had been invited to serve on the Council of State or required to make the declaration under Article 31.4.

34. In support of their arguments relating to the excessively remote and hypothetical nature of the applicants' complaints the Government referred to *Burden v. the United Kingdom* (cited above); *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, §§ 43-44, Series A no. 246-A; *Campbell and Cosans v. the United Kingdom*, 25 February 1982, Series A no. 48, and *Norris v. Ireland*, 26 October 1988, § 32-33, Series A no. 142.

The Government argued that the current applicants were not under any threat of criminal sanction as a result of the requirements of Articles 12.8 or 31.4, they had not been required to modify their conduct to avoid prosecution as a result of those requirements, and they had not established that they were members of a class of persons at risk of being adversely affected as a result of those requirements. The Government claimed the link between the applicants and the alleged violation was not a direct and immediate interest, but a remote and hypothetical one.

35. The Government distinguished *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, ECHR 2009, on the basis that the applicants in that case, due to their ethnic affiliation, were precluded from even running for the relevant office under the Constitution of Bosnia and Herzegovina. The Government argued that other cases where the Court had departed from its general approach to deny individuals the right to challenge a law *in abstracto*, in particular cases where the applicant was unable to establish whether a domestic law had been applied to him or her (*Klass and Others v. Germany*, 6 September 1978, Series A no. 28 and *Roman Zakharov v. Russia* [GC], no. 47143/06, ECHR 2015), were not relevant or applicable to the applicants' circumstances.

36. The Government also emphasised that the amendment of the Constitution must be affected by way of referendum, with the final decision resting with the people in a democratic vote. It noted that the first and second applicants are members of Dáil Eireann and, in that capacity, are in a position to put forward a Bill proposing an amendment to the Constitution under Article 46.

37. The Government accordingly concluded that the applicants had failed to establish that they were directly affected by the requirements of Article 12.8 and 31.4 of the Constitution and their application constituted a challenge *in abstracto* to those provisions and an *actio popularis*.

2. The applicants

38. The applicants rejected the Government's claim that their application was an *actio popularis*. They argued that the category of persons affected by a violation and possessing victim status under Article 35 may be very broad, referring to *Open Door and Dublin Well Woman v. Ireland* (cited above), that there were numerous examples of "potential victims" in the Court's case-law, referring to *Johnston and Others v. Ireland*, 18 December 1986, Series A no. 112 and *Norris v. Ireland* (cited above), that the assessment of victim status depended on the facts of an individual case and the Convention right at issue, and that the cases cited by the Government were thus of limited relevance. In their submissions they claimed that for any of the applicants to take up office as President, if elected, or to serve on the Council of State, if chosen for appointment, he or she would be required to make a declaration to which they had a conscientious objection. While they

accepted that these requirements did not place them at immediate risk in the same manner as applicants in Article 3 cases, or at any risk of prosecution, they claimed that, to serve in either office, any of the applicants would have to radically modify their conduct in a manner which contravened Article 9.

39. As to the Presidency, the applicants argued that their position was very similar to that of the applicants in *Sejdić and Finci* (cited above). While those applicants were barred from running for office, the current applicants could run for the Presidency but, if elected, could not take up office. They argued that, as the requirements of Article 12.8 disqualified them, it was pointless for them to seek election. Unlike the applicants in *Buscarini and Others v. San Marino* (cited above) they were not prepared to take an oath defying their conscience. They claimed that if they had sought election and informed the voters of their position, it was almost inevitable that they would not have been elected, and that the only reason to run in those circumstances would be as a contrivance to justify their current application. They argued that it would be pointless to express an intention to run while Article 12.8 remained in place; they must await the outcome of their application and any consequent amendment of Article 12.8. Even if their application was successful, and this led to a referendum, that process was unlikely to be complete in time to allow them to seek election to the Presidency in 2025. As for the Council of State, they stated that as membership of the Council was "by invitation only" there were no steps available to any of them that would assist in any way in being appointed by the President to the Council.

40. Regarding their personal situation, each of the applicants provided further information explaining why they believed themselves to be victims of the alleged violation. The first applicant stated that she was committed to continuing her political career, "including potentially contesting the Presidency", but indicated that the declaration required by Article 12.8 was contrary to her beliefs, denying her the right to take up that office. She further stated that her political and legislative experience qualified her for service on the Council of State, but Article 31.4 would similarly deny her the right to take up such a position.

41. The second applicant stated that it was open to him "to aspire to be President of Ireland one day" but the declaration required by Article 12.8 denied him his religious liberty and his right to serve in that role. He stated that "he would like to think" that in the future he would be qualified for service on the Council of State. He made similar criticisms of Article 31.4.

42. The third applicant stated that due to his active role in politics, and his work as a writer, activist, advocate for children and the disadvantaged, and campaign manager, he was a viable Presidential candidate. He had a strong interest in contesting the next election. However, the declaration required by Article 12.8 was incompatible with his beliefs. He made no

submissions regarding the declaration required to serve on the Council of State.

43. The fourth applicant described his work in promoting various secular and humanistic causes. He stated that it was not unrealistic for him to believe, on the basis of his career, that he could be invited to serve on the Council of State, and he would be honoured to accept but that as he could not make the declaration required by Article 31.4, he would be denied that right.

44. The fifth applicant stated that, if elected in 2011, he would have made the declaration, but he believed the religious element of the declaration was a misrepresentation of the multidenominational and multicultural nature of contemporary Irish society. He expressed no intention to seek the Presidency again. He stated that if invited to serve on the Council of State he could not serve if a Christian oath was required.

3. Third party submissions

45. The Ordo Iuris Institute for Legal Culture referred to the historical influence of Christianity on European legal culture, and argued that contracting states enjoy a margin of appreciation in regulating the content of official oaths and that this was a matter for the democratic decision-making process.

B. The Court's assessment

1. General principles

46. In order to be able to lodge a petition in pursuance of Article 34 of the Convention, a person must be able to claim "to be a victim of a violation ... of the rights set forth in the Convention ...". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure: the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. However, it is open to a person to contend that a law violates his rights, in the absence of an individual measure of implementation, if he is required either to modify his conduct or risks being prosecuted or if he is a member of a class of people who risk being directly affected by the legislation (see, among other authorities, *Albert and Others v. Hungary* [GC], no. 5294/14, § 120-121, 7 July 2020, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 96 and 101, ECHR 2014, *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010 and *Burden v. the United Kingdom* [GC], no. 13378/05, §§ 33-34, ECHR 2008).

47. The Court has accepted that an applicant may be a potential victim in a range of cases. For example, it has accepted that an applicant enjoys victim status under Article 34 of the Convention where he was not able to establish that the legislation he complained of had actually been applied to him, on account of the secret nature of the measures it authorised (see *Klass and Others*, cited above, pp. 17-18, § 33), where a law prohibiting homosexual acts was capable of being applied to a certain category of the population, which included the applicant (see *Norris v. Ireland*, 26 October 1988, §§ 31-33, Series A no. 142), or where an alien's deportation had been ordered but not yet enforced and where enforcement of the order would have exposed him, in the receiving country, to treatment contrary to Article 3 (see *Soering v. the United Kingdom*, 7 July 1989, Series A no. 161) or would infringe his right to respect for his family life (see *Beldjoudi v. France*, 26 March 1992, Series A no. 234-A).

48. However, in order for an applicant to be able to claim to be a victim in such circumstances, he or she must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally would occur; mere suspicion or conjecture is insufficient in this respect (see *Centre for Legal Resources on behalf of Valentin Câmpeanu,* cited above, § 101, and *Tauira and 18 Others v. France*, no. 28204/95, Commission decision of 4 December 1995, DR 83-B, p. 112 at p. 131).

49. In *Tănase v. Moldova* [GC], cited above, the applicant complained of the restriction of his right under Article 3 of Protocol No. 1 to stand in legislative elections, it being prohibited for elected candidates with dual nationality to take up their parliamentary seats unless they took steps to renounce their other nationality. At the time of the Chamber's examination of the case in 2008, the first applicant had expressed an intention to run in the next elections in 2009 and provided a letter from his party stating they would nominate him. The Chamber considered that he was directly affected because, if elected, he would have to make the choice between sitting as an MP or keeping his dual nationality, (at § 96). By the time of the Grand Chamber judgment the applicant had been elected and taken steps to renounce his dual nationality. The Court stated (at § 108) that the applicant had twice been required to initiate a procedure to renounce his dual nationality to take up his seat and was thus directly affected. Moreover, the knowledge that he would be required to take these steps in order to take up his seat "undoubtedly affected him throughout his electoral campaign" and he may have lost votes as the electorate was aware that he might not take up his seat.

2. Application of those principles to the facts of the case at hand

(a) The declaration for Council of State appointees

50. The Court notes that, under Article 31.3 of the Constitution, the President may, "at his absolute discretion", appoint seven members of the Council of State (see paragraph 16, above). The Court considers that the question of whether any of the applicants were directly affected, within the meaning of the case-law of the Court, by the requirement for members of the Council of State to make the declaration required by Article 31.4 would only arise if and when one of the applicants could show that his or her appointment was a realistic possibility. However, none of the applicants have so far been invited to serve on the Council of State, and none claimed that such an appointment was under consideration. While the first, second and fourth applicants suggested that their current or future experience qualified them for service on the Council, or might qualify them in the future, given the purely discretionary nature of appointments to this body, this can only be a matter of speculation. The third applicant made no submissions as to the Council and the fifth did not address the likelihood of such an invitation (see paragraphs 40-44, above). It follows that none of the applicants have produced reasonable and convincing evidence of the likelihood that a violation affecting any of them personally will occur; mere conjecture is insufficient to establish their victim status (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania,* cited above, § 101).

51. Accordingly, none of the applicants can claim to be "victims" of the alleged violation and this aspect of their complaint is therefore inadmissible pursuant to Article 34 of the Convention.

(b) The Presidential declaration

52. By contrast with the Council of State, any Irish citizen who has reached thirty-five years of age may take active steps to seek the Presidency, but a candidate must be nominated by twenty members of the Houses of the Oireachtas or four local authorities to satisfy the requirements of Article 12.4.2º in order to run for office, and then submit to a popular vote (see paragraph 14, above).

53. In certain cases, the class of persons at real risk of being directly affected by an impugned measure may indeed be very broad (see for instance *Open Door and Dublin Well Woman v. Ireland,* cited above). Indeed, in *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, §§ 28-29, ECHR 2009, in which the applicants complained about their ineligibility to stand for election on account of their Roma and Jewish origin, the Court was satisfied that they could claim to be victims of the alleged violations due to their "active participation in public life". However, the applicants in the present case do not contend that they were

"ineligible" to stand for election. Rather, they complain about a requirement applicable only upon election to the highest office in the Irish State and in the Court's view the class of persons who can claim to be "victims" of such a violation must necessarily be much narrower. Many Irish citizens may, in principle, object to the religious declaration required of the elected President to enter into the office, but very few have any intention to run for office and even fewer would have any possibility of being elected. Therefore, in order for the present applicants to be "victims" within the meaning of Article 34 of the Convention they would have had to provide the Court with reasonable and convincing evidence that they had a real intention of seeking the office of President and that they had some realistic prospects in that regard.

54. In the present case, neither the fourth nor the fifth applicants have expressed a clear interest in running for the office of President (see paragraphs 43-44, above). Therefore, insofar as they now seek to complain about the religious declaration which a successful candidate must make in order to take up the office of President, neither can even arguably claim to be "victims" within the meaning of Article 34 of the Convention.

55. As for the first and second applicant, they described their interest in very general terms (see paragraphs 40-42, above). In particular, the second applicant did not suggest he had any immediate interest in the Presidency or was currently in a position to seek it. The third applicant stated that he had a strong interest in contesting the next election and that he would be a viable candidate.

56. No applicant referred, for example, to the requirement under Article 12.4.2º for a candidate to obtain the support of twenty members of the Oireachtas or four local authorities in order to run for office, or suggested that their own party would, in principle, support their nomination.

57. Thus, none of the applicants sought to establish that they had a realistic prospect of successfully seeking that office with reference to their own particular political circumstances and the constitutional requirements outlined above.

58. The applicants have contended that there would be no point in running for office if they were not prepared to make the declaration required in order to take up that office, should their bid be successful. While the Court has some sympathy with this argument, the fact remains that the applicants have not provided any evidence – or even sought to argue – that they could secure the nomination required to stand for election as President (see paragraphs 40-42, above). In *Tănase v. Moldova* [GC] (cited above), which, unlike the present case, concerned the right to stand for election, the applicant had provided credible evidence that he intended to run and that his campaign would be supported by his party. For the Court, this merely underscores the fact that the applicants in the present case are seeking to have their victim status accepted, not in the context of a clear, immediate

and compelling factual matrix which would allow them to adduce reasonable and convincing evidence that they are at a real risk of being adversely affected by the impugned measure, but rather as a hypothetical outcome, without addressing the very many challenges they would potentially have to overcome to secure that office. Thus, the dilemma of conscience described by the applicants is neither immediate nor imminent. Their situation must therefore be distinguished from those of the applicants in, for examples, *S.A.S. v. France* [GC], no. 43835/11, § 57, ECHR 2014 (extracts), or *Michaud v. France*, no. 12323/11, § 92, ECHR 2012, who faced the dilemma either of complying with the impugned legal provision, or refusing to do so, on account, respectively, of their religious belief or sense of professional ethics, and in so doing exposed themselves to sanction.

59. Accordingly, the Court considers that the first, second and third applicants have also failed to provide reasonable and convincing evidence that they are at real risk of being directly affected by the requirements of Article 12.8 of the Constitution. In the absence of such evidence, they cannot claim to be victims of the alleged violations within the meaning of Article 34 of the Convention.

60. Finally, the Court considers it worth noting that, as pointed out by the respondent Government, Europe is marked by a great diversity between the States of which it is composed, particularly in the sphere of cultural and historical development. In addition, States enjoy a wide margin of appreciation in questions concerning the relationship between States and religion (see, for example, *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 112, 26 April 2016). However, this margin of appreciation goes hand in hand with European supervision, embracing both the law and the decisions applying it. In addition, the Court has emphasised that the reference by a Contracting State to a tradition cannot relieve it of its obligation to respect the rights and freedoms enshrined in the Convention and its Protocols (*Lautsi and Others v. Italy* [GC], no. 30814/06, § 68, ECHR 2011 (extracts)).

61. In light of the foregoing considerations, however, and in the absence of reasonable and convincing evidence that the applicants are at real risk of being directly affected by the impugned requirement in Article 12.8 of the Constitution, it follows that the complaints of all five applicants may be rejected pursuant to Article 34 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 November 2021.

{signature_p_2}

Martina Keller
Deputy Registrar

Mārtiņš Mits
President

Appendix

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	Róisín SHORTALL	1954	Irish	Dublin
2.	John BRADY	1973	Irish	Bray
3.	Fergus FINLAY	1950	Irish	Dublin
4.	David MCCONNELL	1944	Irish	Dublin
5.	David NORRIS	1944	Irish	Dublin