THE COURT OF APPEAL

McGovern J.
Power J.
Murray J.

Neutral Citation Number: [2020] IECA 22

[2019/108]

BETWEEN

MAHELET GETYE HABTE

APPLICANT/RESPONDENT

AND

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT/APPELLANT

[2019/113]

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MAHELET GETYE HABTE

APPLICANT/APPELLANT

AND

MINISTER FOR JUSTICE AND EQUALITY
IRELAND
ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms Justice Power delivered on the 5th day of February 2020

Introduction

1. I adopt the account of the facts and the careful reasoning on the applicable law as set out in the judgment of Murray J. and I agree with the conclusions reached therein. I also agree with the order he makes and with his reasons for so doing.

2. This judgment deals only with one aspect of the appeal brought by the Minister for Justice and Equality ('the Minister') in the first set of proceedings in respect of the High Court judgment of 11 February 2019. It is identified as the first of three legal issues to be determined and it is set out at para 31 (a) of the Minister's submissions in his appeal in case number CA 2019/108. It concerns the necessity and/or correctness of the trial judge's declaration that there exists an unenumerated Constitutional right to have one's identity recognised by the State, together with an implied right for there to be a correct record of a person's age. The trial judge, in fact, referred to *'central aspects of personal*

identity', including, a person's age (paras. 43 to 50 of the judgment). Whilst the applicant ('Ms Habte') before the High Court is the respondent in this appeal, I shall, for ease of reference and to maintain consistency with the judgment of Murray J., hereinafter refer to the respondent as the applicant.

High Court Judgment

3. The High Court (Humphreys J.) recalled that the right to registration of birth, and implicitly to an accurate registration thereof, is recognised by Article 24(2) of the International Covenant on Civil and Political Rights and Article 7 of the Convention on the Rights of the Child. It found that the fulfilment of that right is closely related to the enjoyment of several socio-economic and other rights. It also found that the right to registration of birth, including the right to have the details of one's personal identity correctly recorded, arises under Article 8 of the European Convention of Human Rights. The trial judge found that these rights were in issue, at least to some extent, in this case. That the applicant must have a right to have her identity correctly recognised by the State is so fundamental that *'it must be recognised as an unenumerated constitutional right'* (at para. 43 of the judgment.)

4. In the trial judge's view, the right to registration of one's birth and to an accurate registration thereof also arises, to some extent, as a corollary of data protection principles, including, those set out in the Charter of Fundamental Rights of the EU. Article 8 of the Charter provides that everyone *'has the right of access to data which has been collected concerning him or her and the right to have it rectified'*. Similar rights are included in s. 74 (3) of the *Data Protection Act, 2018* and in s. 9 of the *Freedom of Information Act, 2014*. The High Court considered that the fact that rights are provided for by statute or European Law does not logically mean that corresponding rights cannot also arise, at least in certain circumstances, under the Constitution. Humphreys J. concluded that there is *'an implied constitutional onus on the State arising from the inherent dignity of the individual referred to in the Preamble and the personal rights of the citizen in Article 40.3 of the Constitution to 'accurately record and represent central aspects of personal identity'* (at para. 44 of the judgment).

5. In coming to this view, the High Court observed that the exercise of a number of explicit constitutional rights depend upon an individual's age. To exercise the right to vote, for example, one must be 18 or the right to stand in a general election, 21 or in a presidential election, 35. On this basis, Humphreys, J was satisfied that there must, therefore, exist an implied right to a correct record of one's age if such constitutional rights are to be exercised. Whilst acknowledging that identity is not an easily defined concept, he noted that all the applicant was seeking was that her correct date of birth (and, therefore, the age on which much treatment of her by organs of the State could potentially depend) be accurately recorded. Although the primary onus to have recorded the applicant's date of birth correctly fell upon the Ethiopian authorities, that fact, in itself, did not absolve this State from its duty to record her date of birth correctly within its own records. Consequently, the High Court agreed with the applicant that the right to have an accurate official record of one's identity is an aspect of the personal rights of

citizens under Article 40.3 of the Constitution and Article 8 of the European Convention on Human Rights ('ECHR'), as applied by the Human Rights Act, 2003 (para. 47 of the judgment).

6. In support of the High Court's finding in this regard, Humphreys J. acknowledged that he had derived considerable assistance from the approach taken by Kearns P. in *Caladaras v. An tArd Chláraitheoir* [2013] 3 I.R. 310 at pp. 319 to 320. In that case, the applicant had provided what she believed to be her real or official name when registering her daughter's birth. However, it subsequently transpired that the name she provided was incorrect and was, rather, the name of another woman whose birth certificate she had mistakenly believed to have been her own. On an application to the Office of the Registrar for Births, Deaths and Marriages to have her daughter's birth certificate corrected, the Registrar General refused to amend the certificate indicating that the register was a 'historical record of correct facts at the time the record was created'. In support of his position, he had referred to the judgment of the High Court in *Foy v. An tArd Chláraitheoir*, (Unreported, 9 July 2002) in which McKechnie J. had described a birth certificate as a *'snap shot'* of matters on a particular day rather than a *'continuum record of one's travels through life'*. Since the certificate was, in the Registrar's view, a correct representation of the applicant's details at the relevant time, no amendment could be permitted.

7. In *Caladaras*, Kearns P. was satisfied that the circumstances in *Foy* were *'altogether different'*. The applicant in *Caladaras* was not seeking a retrospective amendment of a birth certificate such as would reflect a change of sex following gender reassignment surgery. An amendment of that nature did not involve an error of fact and was not permitted by the Civil Registration Act 2004. Rather, the applicant in *Caldaras* was seeking only an amendment to reflect the factually correct details at the time of her daughter's birth. Kearns P. held that the applicant was entitled to have the Register amended, accordingly.

The Appeal

8. The Minister has argued that the learned High Court judge was incorrect in law in finding it necessary to declare that there exists an unenumerated constitutional right to have one's identity correctly recognised by the State, together with an implied right for there to be a correct record of a person's age. He claimed that this is so particularly in circumstances where the applicant was not born in the State and where the Minister has no obligation to register her birth. Grounds 1 to 7 of the appellant's Notice of Appeal relate to this alleged error in law.

9. Citing the Supreme Court decision in *Fleming v. Ireland* [2013] 2 I.R. 417, the Minister accepted the 'general proposition' that there is an unenumerated constitutional right to have one's identity accurately recorded. Such rights are necessary to ensure the dignity and freedom of the individual and they inhere in the individual personality which constitutes a vital human component of the social, political and moral order posited by the Constitution. The Minister accepted that this would entail a right to have such State documents as are required to live one's life with dignity, including, a birth certificate and a passport. However, he claimed that, in this case, the applicant had not relied on the

provisions of the Constitution in her Statement of Grounds in the High Court nor had she filed any submissions in relation to the notion of an unenumerated constitutional right to recognition of one's correct identity. Even though this substantial question had not been encompassed by the pleadings in the case, the trial judge, nevertheless, in the Minister's view, went on to find that the applicant *'must have a right to have her identity correctly recognised by the State'*.

10. The Minister advanced a number of arguments in support of his appeal. Firstly, he placed reliance upon the fact that the applicant was not born in the State and that, consequently, the Minister never had any obligation to register the details of her birth. He also argued that the difficulties surrounding the applicant's date of birth placed him in an exceptionally difficult position, in terms of ascertaining, with certainty, the date upon which she was, in fact, born. Furthermore, the Minister claimed that the approach of Humphreys J. had involved a breach of the separation of powers because it had, in effect, provided for a new ministerial function and power over and above the supervision of the reliability of a certificate of naturalisation. Even if a legislative scheme were necessary for the vindication of one's personal identity rights, the role of the court, the Minister argued, does not extend to creating such a scheme. He relied upon *A.P. v. Minister for Justice* [2019] IESC 47, by analogy, in support of his claim in this regard.

11. From the perspective of European law, the Minister relied on *Butt v. Norway* App. No. 47017/09 (ECHR, 4 December 2012) in support of his contention that applicants have a duty to provide correct details of personal identity. Whilst acknowledging that *Butt* related to immigration, generally, he argued that the duty would apply a *fortiori* in the context of the naturalisation process. Such a process can be a means whereby non-nationals acquire not only Irish citizenship, but proof of identity, internationally. Given the difficulties pertaining to ascertaining the correct date of the applicant's birth, the Minister claimed that any unenumerated right to have one's date of birth recognised, formally, by the State could not be relevant to or engaged by these proceedings. Even if he were incorrect in this regard, he submitted that the alteration of the record of one's date of birth involves the alteration of a key personal identifier and that there must exist a countervailing public interest in ensuring that a person cannot simply change his or her identity.

12. The Minister claimed that the European Convention on Human Rights did not advance the applicant's case, significantly. Article 8 requires only that a deprivation of citizenship should not be 'arbitrary' and that adequate procedural safeguards against arbitrariness exist (*Ramadan v. Malta*, App. No. 763613/12 (ECHR, 21 June 2016.) He submitted that the s. 19 process as provided for in the Irish Nationality and Citizenship Act 1956 ('the 1956 Act') demonstrates that the Minister's actions have a legal basis and that decisions taken in respect of citizenship are not *ad hoc* administrative acts. He claimed that there were *'ample procedural safeguards'* within the s.19 process, including, a right to request an Inquiry by a Committee and a right to judicially review his decision.

13. The case of *Rottman v. Freistaat Bayern* (Case C-135/08) was relied upon by the Minister to demonstrate that the notion of an 'arbitrary' deprivation of citizenship under international law does not extend to a deprivation for misrepresentation. In such a case, it was argued, deprivation of citizenship could be justified even if it were to render a person stateless. The Minister argued that Article 7 of the Charter is largely coextensive with Article 8 of the Convention, and, in the absence of any evidence as to the effect on the applicant's private or family life, those Articles were not engaged in the decision to notify her of the intention to revoke her citizenship. This was all the more so in circumstances where the Minister had not, as yet, even decided to revoke the applicant's citizenship and may never do so as more information may come to light in the revocation process. Finally, the Minister claimed that Article 8 of the Charter does not arise in the circumstances of this case as there is no assertion let alone evidence, that the personal data of the applicant would not be protected by the Minister during the revocation process.

14. Against those arguments, the applicant submitted, firstly, that in the High Court proceedings she had, indeed, relied on the right to have her correct identity officially recorded and she referred the court, specifically, to her submissions in this regard. In *Caldaras*, the High Court had recognised that the right to have a correct official record of one's identity was an aspect of the unenumerated personal rights both within the Constitution and under Article 8 of the European Convention on Human Rights. Insofar as the Minister had sought to argue that he had no obligation to register details of her birth because she was not born in Ireland, this, she claimed, ignored the fact that the successful applicant in *Caldaras* had been born in Romania. The Minister's argument also failed to acknowledge the nature of the applicant's rights as an Irish citizen. The right to have her identity correctly recorded was one which accrued to her regardless of where she was born because by the time her application to amend the certificate had been made, she was, in fact, a citizen of Ireland. There was no justification for the Minister's attempt to limit the application of this unenumerated constitutional right solely to persons who were born in Ireland.

15. The applicant disputed the assertion that the trial judge had extended the Minister's powers and duties. She claimed that the judge's finding was simply a corollary of the data protection principles, including, those contained in Article 8 of the Charter of Fundamental Rights of the EU, the Data Protection Act 2018 and the Freedom of Information Act 2014 under which all citizens have the right to rectification of their personal data. Further, the trial judge had not breached the separation of powers principles but had correctly sought to vindicate her constitutional rights and his approach was entirely consistent with Supreme Court jurisprudence (*A.P. v. Minister for Justice* [2019] IESC 47, paras. 5.12 to 5.13). She submitted that, in this case, there had been no gap in the law per se. What she was facing was an overly literal interpretation of s.19 of the 1956 Act matched with an asserted policy that once a certificate of naturalisation issues, the Minister would not correct it unless the error in question was a clerical one committed within the Department. The applicant contended that the trial judge had been entirely correct in finding that the Minister's stated view that he could refuse to consider an amendment on

the basis of such a policy without any regard to her rights was contrary to the requirement that he act lawfully and in accordance with the Constitution.

The Legal Issue

16. It would appear that the specific right to recognition of one's date of birth and to a correct recording thereof has not, *per se*, been litigated before the Irish or the European courts. To that extent, this appeal raises a somewhat novel point. That said, however, the legal principles to be derived from case law in which the courts have considered the existence or scope of the right to have other aspects of personal identity reflected in official records, provide helpful guidance in approaching this appeal.

17. In this case, Humphreys J. found that the right to have one's identity correctly recognised by the State is *'so fundamental that it must be recognised as an unenumerated constitutional right'*. Whilst the elevation of this right to constitutional status is a novel feature of this case, the interaction between constitutional rights and the registration of identity details, generally, has been examined before by the Irish courts in a number of cases, including, *Foy v. An tArd Chláraitheoir* [2002] IEHC 116, [2007] IEHC 470 and in *Caldaras v. An tArd Chláraitheoir* [2013] IEHC 275, [2013] 3 I.R. 310, and, most recently, in *O.R. v. an tArd Chláraitheoir* [2014] IESC 60, [2014] 3 I.R. 533.

18. Certain observations in the judgments of the Supreme Court in *O.R. v. an tArd Chláraitheoir* provide a good starting point for considering the Minister's specific complaint under consideration in this judgment (see para. 2 above). In *O.R.*, a married couple who had availed of a surrogacy arrangement challenged the refusal by an tArd Chláraitheoir to register the genetic mother—as distinct from the gestational mother—of twins as the 'mother' on the children's birth certificates. The Supreme Court overturned an order of the High Court which had declared that the genetic mother was entitled to be registered as the *'mother'*. It held that the term *'mother'* under the Civil Registration Act 2004 did not extend to genetic mothers in surrogacy arrangements and that thus there existed a *lacuna* in the law which was more appropriately filled by the legislature rather than by the courts, due to the complex and sensitive nature of surrogacy arrangements. Notwithstanding the reversal of the High Court order, McKechnie J. was satisfied that the relationship of the genetic mother and the children and their relationship with the genetic mother in the context of the reproductive process involved in their conception, was justly deserving of recognition at constitutional level (at para. 393). The High Court had found that chromosomal DNA material has a deterministic influence on the uniqueness of the embryo, which carries into the inheritable characteristics upon which our individual sense of self and identity is based. Such an input into creation, in the view of McKechnie J., was so integral that it must command constitutional protection. He was satisfied that rights *'at the highest level of our legal order'* were involved in the circumstances as outlined. This required that the natural and human association between mother and child and child and mother must be recognised in law, in a way that reflects the fundamental reality of the situation.

19. Clarke J. (as he then was) filed a dissenting judgment holding that the *'least bad'* solution to the case was for an tArd Chláraitheoir to put in place such administrative measures as

would be necessary to record both the genetic mother and the gestational mother. He found that the applicants had a constitutional entitlement to have the State recognise their familial status, although the State may be entitled to properly regulate the recognition of such status. His comments on the register of births, however, are worth recalling in the context of the instant appeal. He said:

> *'While not decisive, it is also worth noting that persons, understandably, place a high value on the way in which their status is officially recognised. We do not maintain, in this jurisdiction, any general register of persons which records matters such as their age, gender and indeed, parentage. The closest we have is the register of births, marriages and deaths. In those circumstances it is hardly surprising that persons are concerned that the way in which their birth is registered accurately reflects the legal situation, for it is, in normal circumstances, the only official record of their status.' (at para. 506)*

20. The European Court of Human Rights has also considered the legal protection to be afforded to features of personal identity, such as, name, gender and ethnicity, in a number of cases. Its jurisprudence confirms that the question of the official record of one's personal data is a matter that falls within the scope of Article 8 of the ECHR (see *Goodwin v. UK* App. No. 28957/95 (ECHR, 11 July 2002.) The key finding in *Goodwin*—a case concerning gender identity—was applied, subsequently, in *Grant v. UK* App. No. 32570/03 (ECHR, 23 August 2006) which held that a refusal to recognise the gender status of the applicant and to accord her the appropriate pension rights amounted to a violation of her Article 8 rights from the date of the *Goodwin* judgment onwards.

21. In *Ciubotaru v. Moldova*, App. No. 271138/04 (ECHR, 27 April 2010) it was ethnicity as a feature of personal identity that arose for the court's consideration. The applicant sought to change the registration of his ethnic origin in official records. The State's failure to examine his claim to belong to a certain ethnic group in the light of objectively verifiable evidence amounted, in the court's view, to a violation of his right to respect for his private life. In *Cemalettin Canli v. Turkey*, App. No. 22427/04 (ECHR, 18 November 2008) the Court confirmed that Article 8 of the Convention is applicable to personal data pertaining to private life even where such data is in the public domain. It found that *'public information'* can fall within the scope of *'private life'* where it is systematically collected and stored in files held by the authorities. It held that the retention and transmission of an inaccurate police report constituted an interference with the applicant's right to respect for his private life within the meaning of that provision.

Discussion

22. As noted, Humphreys J. acknowledged that he had derived *'considerable assistance'* from the case of *Caladaras* in coming to his conclusions in this case. In *Caladaras*, Kearns P. had distinguished the circumstances of correcting an error of fact on a birth certificate from a retrospective amendment of a certificate to reflect a change of sex following gender reassignment surgery. This Court considers that such a distinction can be sustained. In *Caladaras*, the High Court was satisfied that constitutional and Convention rights were engaged in the process of an application to amend a birth certificate so as to

reflect correct personal identity details, confirming that both a parent and a child have the right to have the correct identity of the parent recorded on a child's birth certificate. Kearns, P. stated:

> *"In terms of the Irish Constitution, the 'double construction rule' requires that statutory provisions be given an interpretation which allows for the personal rights of individuals to be respected. Furthermore, s. 2 of the European Convention on Human Rights Act, 2003 provides that in interpreting and applying any statutory provision or rule of law a court shall, insofar as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions."*

Kearns P. held that allowing such an amendment does not involve an interpretation of the provisions of the Civil Registration Act 2004 in a manner that is fundamentally at variance with a key or core feature of the statutory provision or rule of law in question. He found that there was no requirement or test under the 2004 Act, such as would require that only mistakes made by the Registrar General or his or her staff could be corrected. I agree with Humphreys J.'s endorsement of the approach taken by Kearns P. and consider that *Caldaras* provides a useful lens through which (to borrow a phrase from McKechnie J. in O.R.) *'the fundamental reality of the situation'* in issue in this appeal may be viewed.

23. The fundamental reality of the situation here is that the applicant claims that her date of birth, as it appears on the certificate of naturalisation, is incorrect when calculated according to the Gregorian calendar. Whilst the legal issue on personal identity rights in this case is less complex and diverse than those arising in the area of assisted reproduction, the reality, nevertheless, remains that the applicant's date of birth is an integral aspect of her personal identity. Although the Supreme Court in *O.R.* refrained from making an order as to the registration entitlements of the applicants due to the difficulties in making a democratically sound determination on the definition of 'mother' in surrogacy arrangements, the judgments of the Court, nevertheless, affirm the importance of maintaining an accurate register of births and recognise this as a prerequisite for the vindication of numerous constitutional rights. The Supreme Court's observations in this regard apply, by analogy, to other official records of an individual's personal data.

24. It is difficult to conclude that the Minister's arguments for setting aside the trial judge's findings concerning the personal identity rights of the applicant are persuasive. The Minister claims that he had no obligation to register the details of her birth because of the fact that she was not born in the State. Whilst the Supreme Court has not, as yet, determined the extent to which constitutional rights vest in persons who are non-citizens, one can assert, at least as a general principle, that the most basic of fundamental human rights are not dependent upon the place of one's birth. They are not the gift of any State. They inhere in the individual on the basis of his or her humanity. Whereas the chance location of one's place of birth may influence the extent to which fundamental human rights are respected, it cannot and does not determine their existence. The applicant, in this case, however, is an Irish citizen and the fundamental rights in issue in this appeal

are related to matters concerning her personal identity. Any citizen whose personal identity details are registered by the State has a right to have such registration recorded, accurately, and in a manner that is factually correct. The State held personal identification details on the applicant and she is entitled to a correct recording of those details. At the time of the applicant's request to amend her certificate of naturalisation, the legal reality that obtained cannot be overlooked. The applicant, as the holder of such a certificate (albeit one which recorded, in her view, a factual error in her birth date when calculated according to the Gregorian calendar) was and remains an Irish citizen. Accordingly, she is entitled to the protection of the Constitution on the same basis as every other Irish citizen.

25. Furthermore, the contention that the approach of the learned High Court judge involved a breach of the separation of powers principle—by providing for a new ministerial function and power over and above the supervision of the reliability of certificate of naturalisation—is not convincing. No new administrative power or function has been created in this case. The trial judge made an order that *'the Minister do consider if appropriate in the light of any report of the committee of inquiry whether the applicant's certificate of naturalisation should be amended in the sense of being cancelled and reissued with the correct date of birth'*. I do not consider that in making this order he was engaged in devising a legislative scheme and imposing it on the Minister. It would, indeed, have been a breach of the separation of powers principle for a court to have done so (see Clarke C.J., *A.P. v The Minister for Justice and Equality* [2019] IESC 47, para. 5.21]. It is clear from the judgment of the High Court that Humphreys J. took the view that it was for the Minister to make the final decision on the outcome of the s. 19 process in this case. I consider that it was entirely within the remit of the trial judge to find that the right to have one's identity correctly recognised by the State is *'so fundamental that it must be recognised as an unenumerated constitutional right'*. In finding that the applicant was entitled to have her date of birth correctly recorded in official documents, the High Court's declaration constituted no more than a vindication of her constitutionally protected rights, including, those rights, the exercise of which necessarily depends upon the correct recording of a citizen's age.

26. Having considered the case law relied upon by the Minister in support of his appeal, I am not persuaded that it supports his position, greatly. If anything, the Supreme Court's judgment in *Fleming v. Ireland* [2013] 2 I.R. 417 reinforces the applicant's starting point. Nor does the Strasbourg Court's judgment in *Butt v. Norway* advance the Minister's case, in any way. In *Butt*, the applicants had resided in Norway from an early age except for a short period in their lives when they and their mother had returned to Pakistan. They were granted a settlement permit at a time when the Norwegian authorities were ignorant of the three-year period spent in Pakistan and it was based on false information provided by their mother that she and the applicants had continued to reside in Norway. Notwithstanding the provision of such false information, the Strasbourg Court nevertheless found that the respondent State had exceeded its margin of appreciation when seeking to strike a fair balance between its public interest in ensuring effective immigration control and the applicants' interests in remaining in Norway to pursue their

private and family life. It concluded that the applicants' deportation from Norway would entail a violation of Article 8 of the Convention.

27. Whilst it is not for this court to determine that the applicant's error was innocent (see para. 85 of the judgment of Murray J.) I do not consider that it has been established, at this stage of the proceedings, that there has been a deliberate concealment of a material fact or a breach of the duty of full disclosure such as occurred in *Butt*. It must be recalled that the applicant had enclosed with her application for naturalisation, a letter of 31 May 2014 setting out the differences between the Ethiopian and Gregorian calendars and that she had furnished a telephone number at which she could be contacted in the event of any questions. It must also be recalled that it was she who drew the Minister's attention to what, she claims, is an inaccuracy in the certificate of naturalisation.

28. Insofar as reliance was placed by the Minister on *Rottman v. Freistaat Bayern* (Case C-135/08), I accept that this case may be authority for the proposition that an 'arbitrary' deprivation of citizenship under international law does not extend to deprivation for misrepresentation. In that case, the CJEU held that it is not contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation *when that nationality was obtained by deception*, on condition that the decision to withdraw observes the principle of proportionality (emphasis added). Again, it has not been established, at this stage of the proceedings, that the applicant's naturalisation has been based on deception or material misrepresentation. That is a matter for the Minister to decide. However, as Murray J. notes (at para. 49 of his judgment) it cannot be said that the issue of a certificate on foot of information provided by an applicant which is incorrect has for that reason alone been *'procured ... by misrepresentation'* in the sense in which the phrase is used in section 19(1) of the Act of 1956.

Decision

29. I am satisfied that the recognition by the State of a person's date of birth is engaged both as an unenumerated constitutional right and under the 'private life' limb of Article 8 of the ECHR. Whilst it would appear that there is no specific case on point in either in Irish or European law, the trial judge's declaration is not inconsistent with principles arising in cases which deal with other aspects of personal identity. Such principles, to my mind, may be applied, by analogy, with equal force to the facts of this case.

30. Just as in *Stjerna v. Finland*, App. No. 18131/91 (ECHR, 25 November 1994) the Strasbourg court held that a name constitutes a means of personal identification and a link to a family, so it can be accepted that a person's date of birth also constitutes an important means of personal identification. One need only observe, how in the medical sphere and health care systems, for example, a person's date of birth is routinely used as an important cross-check to confirm his or her identity.

31. I am led to conclude that a person's date of birth is a significant aspect of his or her personal identity and constitutes an important link to his or her family. The right to have one's date of birth recognised by the State and recorded accurately must fall within that

category of rights which are at what McKechnie J describes as *'the highest level of our legal order'* (*O.R.* at para. 393). Consequently, I am satisfied that the trial judge did not err in law in finding that personal identity rights are engaged in the process in issue in this case. He was entitled to come to the view that the applicant's right to have her identity correctly recognised by the State is so fundamental that it must be recognised as an unenumerated constitutional right. He was further entitled to conclude that there exists an implied constitutional onus on the State, arising from the inherent dignity of the individual referred to in the Preamble and the personal rights of the citizen in Article 40.3 of the Constitution, to *'accurately record and represent central aspects of personal identity'*.

32. In these circumstances and for the reasons set out above, I dismiss the Minister's appeal on this point.