



**AN BILLE UM AN NAOÚ LEASÚ IS FICHE AR AN
mBUNREACTH 2009
TWENTY-NINTH AMENDMENT OF THE CONSTITUTION
BILL 2009**

EXPLANATORY MEMORANDUM

Article 35.5 of the Constitution states:

“The remuneration of a judge shall not be reduced during his continuance in office.”

As a consequence of this provision should there be a reduction in public sector pay the judiciary are constitutionally immune from any such reduction and any legislation enacted or other decision made to reduce judicial salaries would be unconstitutional. The purpose of this provision as contained in the 1937 Constitution is to preserve the independence of the judiciary and to prevent the executive and/or parliament from reducing judicial salaries as sign of disapproval of judicial conduct or in retaliation for a judgement delivered with which the government and/or a parliamentary majority disagree.

An essential principle in conjunction with preserving the independence of the judiciary is that public respect for the judiciary is maintained and that the judiciary are not brought into disrepute as an essential organ of the State. Should the financial emergency with which the State is confronted result in the government determining to implement a public sector wage reduction and should the judiciary due to the current constitutional provision be exempt from such reduction having regard to the current level of judicial salaries there will be justifiable public outrage. Such a state of affairs will be perceived by many people as grossly unfair. As a matter of principle it is important that the judiciary are seen to respond in a manner consistent with all others in the public service to the current financial emergency and the incapacity of the State to maintain the present level of current public expenditure.

To tackle this issue requires a constitutional referendum to amend Article 35.5. It is essential that any such provision cannot be used in any way by any future government to undermine judicial independence. The provision contained in this Bill is intended to ensure that the independence of the judiciary cannot be undermined whilst also facilitating a reduction in judicial salary similar to that imposed either across the public sector generally or on a comparative class of public servants. Such constitutional change will address the difficulty that derives from the current Article 35.5 in the context of the current serious threat to the State's economy and the compelling need to stabilise the State's finances.

The Bill proposes the deletion of the current Article 35.5 and its replacement with the following new Article 35.5:

Article 35.5

The remuneration of a judge shall not be reduced during his continuance in office save where it is necessary to address a serious threat to the State's economy, there is a compelling need to stabilise the State's finances and as a consequence it is necessary to effect a reduction in public service remuneration; in such circumstances any reduction in the remuneration of all public servants or in the remuneration of a class of public servants may be applied to effect a comparable reduction in the remuneration of all members of the judiciary.

The pension levy created in the last budget was not extended to the judiciary due to the government's fear that the levy is in violation of the current Article 35.5. Arguably the government were incorrect in this conclusion. The adoption by referendum of the amendment contained in this Bill would remove this alleged constitutional obstacle to extending the levy to the judiciary should the government intend that it continues in its present form after the December 2009 budget.

*Alan Shatter T.D.,
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