Court of Appeal

Regina (Ardagh Glass Ltd) *v* Cheshire West and Chester Council

[2010] EWCA Civ 172

2010 Feb 3 Jacob, Lloyd, Sullivan LJJ

Planning — Planning permission — Retrospective application — Environmental impact assessment development — Developer seeking retrospective planning permission for EIA development — Whether grant of retrospective permission for EIA development permissible — Town and Country Planning Act 1990 (c 8), s 73A (as inserted by Planning and Compensation Act 1991 (c 34), s 32 and Sch 7, para 16(1)) — Council Directive 85/337/EEC, art 2(3) (as amended by Council Directive 97/11/EC and Parliament and Council Directive 2003/35/EC)

The interested party applied to the local planning authority for retrospective planning permission under section 73A of the Town and Country Planning Act 1990[1] for a large glass container factory which had already been built and was in operation. It was common ground that the development constituted environmental impact assessment ("EIA") development for the purposes of Council Directive 85/337/EEC[2] and the relevant national regulations, so that planning permission could not be granted without consideration of the environmental impact of the development. The claimant, a competitor of the interested party, issued judicial review proceedings against the local authority seeking, inter alia, an order prohibiting the grant of planning permission on the ground that the Directive and European Union law did not permit the grant of retrospective planning permission for EIA development. The judge dismissed that part of the claim, holding that retrospective planning permission could lawfully be granted as long as the relevant decision-making authorities paid careful regard to the objectives of the Directive.

On the claimant's appeal—

Held, dismissing the appeal, that while member states had to take all appropriate measures to ensure compliance with Council Directive 85/337/EEC and to nullify the effects of any breach, such measures had to be proportionate; that a prohibition on the grant of retrospective planning permission for EIA development regardless of the circumstances surrounding, and the environmental consequences of, breach of the Directive would be an affront to common sense, wholly disproportionate and contrary to established EU law; that, exceptionally, retrospective planning permission could lawfully be granted for EIA development provided that the parties concerned were not thereby given the opportunity to circumvent EU rules or to dispense with applying them; that provided the relevant decision-maker, whether the local planning authority or the Secretary of State, exercised his discretion with that condition in mind, there would be no breach of EU law; and that, accordingly, the judge had not erred in holding that EU law permitted, subject to certain conditions, the grant of retrospective planning permission for EIA development, and the

[1] Town and Country Planning Act 1990, s 73A, as inserted: "(1) On an application made to a local planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application. (2) Subsection (1) applies to development carried out— (a) without planning permission; (b) in accordance with planning permission granted for a limited period; or (c) without complying with some condition subject to which planning permission was granted. (3) Planning permission for such development may be granted so as to have effect from— (a) the date on which the development was carried out; or (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period."

[2] Council Directive 85/337/EEC, art 2(3), as amended: see post, para 23.

lawfulness of such permission would be for the Administrative Court to decide in pending judicial review proceedings (post, paras 14–16, 21, 26, 31–32, 33, 34).

Commission of the European Communities v Ireland (Case C-215/06) [2008] ECR I-4911, ECJ applied.

Per curiam. Article 2(3) of Council Directive 85/337/EEC, whereby member states may in exceptional cases exempt a specific project from the provisions of the Directive, is not relevant for present purposes. It is not concerned with the circumstances in which, exceptionally, national law may permit the regularisation of an unauthorised project which is subject to the requirements of the Directive. Instead, it defines the circumstances in which specific projects may be exempted from the requirements of the Directive. In such exceptional cases, the need for an environmental impact statement is dispensed with, and there need be no assessment unless the member state considers that "another form of assessment would be appropriate" (post, paras 25, 33, 34).

Decision of Judge Mole QC sitting as judge of the Queen's Bench Division [2009] EWHC 745 (Admin); [2009] Env LR 698 affirmed.

The following cases are referred to in the judgment of Sullivan LJ:

Commission of the European Communities v Ireland (Case C-215/06) [2008] ECR I-4911, ECJ

Commission of the European Communities v Italian Republic (Case C-58/90) [1991] ECR I-4193, ECJ

von Colson v Land Nordrhein-Westfalen (Case 14/83) [1984] ECR 1891, ECJ

The following additional cases were cited in argument:

Amministrazione delle Finanze dello Stato v Simmenthal SpA (Case 106/77) [1978] ECR 629, ECJ

Berkeley v Secretary of State for the Environment [2001] 2 AC 603; [2000] 3 WLR 420; [2000] 3 All ER 897, HL(E)

Customs and Excise Comrs v ApS Samex [1983] 1 All ER 1042

Francovich v Italian Republic (Case C-6/90) [1995] ICR 722; [1991] ECR I-5357, ECJ

Germany (Federal Republic of) v Commission of the European Communities (Case 8/88) [1990] ECR I-2321, ECJ

Inter-Environment Wallonie ASBL v Région Wallonne (Case C-129/96) [1998] All ER (EC) 155; [1997] ECR I-7411, ECJ

Luxembourg, State of the Grand Duchy of v Linster (Case C-287/98) [2000] ECR I-6917, ECJ

Marleasing SA v La Comercial Internacional de Alimentación SA (Case C-106/89) [1990] ECR I-4135, ECJ

R (Rockware Glass Ltd) v Chester City Council [2005] EWHC 2250 (Admin); [2006] Env LR 723; [2006] EWCA Civ 992; [2007] Env LR 32, CA

R (Wells) v Secretary of State for Transport, Local Government and the Regions (Case C-201/02) [2005] All ER (EC) 323; [2004] ECR I-723, ECJ

Syndicat Professionnel Coordination des Pêcheurs de l'Etang de Berre et de la Region v Electricité de France (Case C-213/03) [2004] ECR I-7357; [2005] Env LR 232, ECJ

The following additional cases, although not cited, were referred to in the skeleton arguments:

Booker Aquaculture Ltd (trading as Marine Harvest McConnell) v Scottish Ministers (Joined Cases C-20/00 and C-64/00) [2003] ECR I-7411, ECJ

Bovis Homes (Scotland) Ltd v Inverclyde District Council [1983] JPL 171; [1982] SLT 473

Chapman v United Kingdom (2001) 33 EHRR 399

R v West Oxfordshire District Council, Ex p C H Pearce Homes [1986] JPL 523; 26 RVR 156, DC

R (Billings) v First Secretary of State [2005] EWHC 2274 (Admin); [2006] JPL 693

R (Blow up Media UK Ltd) v Lambeth London Borough Council [2008] EWHC 1912 (Admin); [2009] 1 P & CR 187

R (Burkett) v Hammersmith and Fulham London Borough Council [2004] EWCA Civ 105; [2001] Env LR 684, CA

R (O'Brien) v Basildon District Council [2006] EWHC 1346 (Admin); [2007] 1 P & CR 257

R (Prokopp) v London Underground Ltd [2003] EWCA Civ 961; [2004] Env LR 170; [2004] 1 P & CR 479, CA

APPEAL from Judge Mole QC sitting as a judge of the Queen's Bench Division

In January 2008 the interested party, Quinn Glass Ltd, submitted two planning applications and an environmental impact assessment to the local planning authorities, Chester City Council and Ellesmere Port & Neston Borough Council, seeking retrospective planning permission for an environmental impact assessment ("EIA") development, namely a glass manufacturing factory, which had been constructed at Elton.

By a judicial review claim form issued in February 2009 the claimant, Ardagh Glass Ltd, sought permission to proceed with a claim for judicial review by way, inter alia, of (1) a mandatory order requiring the local authorities (whose responsibilities devolved on 1 April 2009 to the defendant local authority, Cheshire West and Chester Council), to issue an enforcement notice in respect of the unlawful development; and (2) an order prohibiting the grant of retrospective planning permission for the development, alternatively, a declaration that such grant of permission would be unlawful. On 8 April 2009 Judge Mole QC [2009] Env LR 698, sitting in the Administrative Court as a judge of the Queen's Bench Division, granted permission for the claim to proceed, ordered the defendant local authority to issue an enforcement notice in respect of the unlawful development but refused the order prohibiting the grant of planning permission.

By an appellant's notice dated 29 April 2009, and with the permission of the judge, the claimant appealed against the refusal of the prohibitory order on the grounds that the judge had erred in holding that planning permission could be granted retrospectively for EIA development and that the local authority was not required to serve a stop notice in respect of an unauthorised EIA development.

On 10 and 12 November 2009 the local authority granted the planning permission sought by the interested party, including retrospective planning permission for the existing works, and on 18 December 2009 the claimant applied for permission to claim judicial review of those permissions. The claim was outstanding at the time of the appeal.

The facts are stated in the judgment of Sullivan LJ.

Robert McCraken QC and *James Pereira* (instructed by *DLA Piper UK LLP*) for the claimant.

Ian Dove QC and *Ian Ponter* (instructed by *Denton Wilde Sapte*) for the local authority.

Richard Drabble QC and *Reuben Taylor* (instructed by *CMS Cameron McKenna LLP*) for the interested party.

A 3 February 2010. The following judgments were delivered.

SULLIVAN LJ

Introduction

1 This is an appeal from that part of the order, dated 8 April 2009, of
B Judge Mole QC, sitting as a High Court judge, in which he decided: "that, in respect of issue 2, [the claimant's] claim be dismissed." The judge decided issue 1 in the claimant's favour. The interested party appealed against that part of the order, but on 29 January 2010 its appeal was dismissed with consent.

History

C **2** In his judgment [2009] Env LR 698, paras 3 to 7 the judge set out the planning history of the interested party's glassworks at Elton, near Chester ("the works"). The works, on a site which had previously been occupied by a power station, were designed to be the largest glass container factory in Europe. Site enabling works began in October 2003 and the first glass for customers was produced on 2 May 2005.

D **3** The works were constructed without planning permission. It is common ground that the construction of the works was an "EIA development" (environmental impact assessment development) for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293) (as variously amended). The 1999 Regulations prohibit the grant of planning permission for EIA development without consideration of the environmental
E information required by the Regulations (an environmental statement and any representations made in response thereto).

4 Applications for planning permission for the works were made in July 2004 when the plant was under construction. The applications were called in by the Secretary of State. After a lengthy public inquiry held between November 2005 and March 2006 the Secretary of State accepted the
F inspector's recommendation and refused planning permission in a decision letter dated 22 January 2007.

5 In para 66 of the decision letter the Secretary of State said:

> "The Secretary of State agrees with the inspector (IR 9.225) that submitting a fresh application with a comprehensive approach may be an appropriate way forward in the circumstances of this case. This decision
G letter sets out where the Secretary of State has particular concerns, and it appears to her that overcoming those deficiencies might enable the material considerations in a fresh application to be weighed favourably enough so that planning permission may be granted."

6 In January 2008 the interested party submitted two applications for planning permission. Those applications sought, in part, retrospective
H planning permission under section 73A of the Town and Country Planning Act 1990 (as inserted by section 32 of and paragraph 16(1) of Schedule 7 to the Planning and Compensation Act 1991) for the development which had been carried out at the works; permission was also sought for various new elements and alterations. Those applications were accompanied by an environmental statement.

7 The two applications were undetermined when the claimant's claim was considered by the judge in March 2009. On 10 and 12 November 2009 the local authority granted two planning permissions, including retrospective planning permission for the existing works. On 18 December 2009 the claimant applied for permission to apply for judicial review of those permissions.

The issues before the judge

8 There were two issues before the judge. The first was whether he should grant the claimant's application for a mandatory order requiring the local authority to issue an enforcement notice in respect of the breach of planning control that had occurred by reason of the unlawful development of the works. The second was whether he should make an order prohibiting the grant of any retrospective planning permission for the construction of the works, or alternatively make a declaratory order that such a grant of permission would be unlawful.

9 The judge having resolved the first issue in the claimant's favour, an enforcement notice was duly issued by the local authority under section 172 of the 1990 Act. The interested party appealed to the Secretary of State against the enforcement notice under section 174 of the 1990 Act; that appeal has not yet been determined by the Secretary of State. There is no longer any appeal against the judge's decision on issue 1, so I will say no more about it.

10 When dealing with issue 2 the judge said [2009] Env LR 698, para 69 that the claimant's central submission was that "on its proper interpretation EC law does not permit the grant of retrospective planning permission for EIA development".

11 Having considered the relevant authorities, including the authority particularly relied upon by the claimant—*Commission of the European Communities v Ireland* (Case C-215/06) [2008] ECR I-4911 ("the *Ireland* case")—the judge rejected that submission. He concluded, at para 111:

> "I do not find that retrospective planning permission cannot lawfully be granted; it can, as long as the competent authorities pay careful regard to the need to protect the objectives of [Directive 85/337]. The procedures adopted are a matter for the state. I am clear that, once an enforcement notice is issued, the existing procedures are able to ensure compliance with Directive 85/337."

The grounds of appeal

12 The claimant's grounds of appeal contended that the judge erred in holding that (1) planning permission could be granted retrospectively for EIA development; and (2) the local authority was not required to serve a stop notice in respect of an unauthorised EIA development.

13 In his submissions this morning, Mr McCracken QC, on behalf of the claimant, explained that, in respect of the first of those grounds, the submission was that retrospective permission could be granted only in accordance with article 2(3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p 5) and by Parliament and Council Directive 2003/35/EC of 26 May 2003 (OJ 2003 L 156, p 17) (see below).

Discussion

14 Before considering article 2(3) I will consider whether the judge was correct to reject the bald proposition that European Union ("EU") law did not permit the grant of retrospective planning permission for EIA development. I have no doubt that the judge's conclusion was correct for three reasons: it accorded with (a) common sense; (b) the need to ensure that measures to ensure compliance with the Directive are proportionate in accordance with EU law; and (c) the Court of Justice of the European Communities' judgment in the *Ireland* case, which in my view expressly recognises that, subject to certain conditions, national law may permit regularisation of an unauthorised EIA development.

Common sense

15 Given the variety of circumstances in which EIA development might be carried out in breach of the requirements of the Directive and the wide range of environmental consequences of such a breach, it would be very surprising if there was only one lawful response to a breach, however caused and whatever its environmental consequences. At one extreme, development causing very serious environmental harm might have been carried out in flagrant and deliberate contravention of the Directive. In such a case, removal of the unauthorised development would be appropriate. At the other end of the spectrum there might have been an inadvertent failure to comply with the Directive (for example, a development carried out in reliance upon an apparently valid planning permission which was subsequently quashed on legal grounds, quite unconnected with the EIA), which had not merely caused no environmental harm but was positively beneficial in environmental terms. It would, in my judgment, be an affront to common sense if retrospective planning permission (correcting the legal error unrelated to the EIA) could not be granted in such a case, and the local planning authority was compelled to require the removal of the development prior to considering any further application for planning permission, not least because the process of removal might itself cause serious environmental harm.

Proportionality

16 While member states must take all appropriate measures to ensure compliance with the Directive and to nullify the effects of any breach, it is a fundamental principle of EU law that such measures must themselves be proportionate. For the reasons set out in the previous paragraph, a prohibition upon the grant of retrospective planning permission for EIA development, regardless of the circumstances surrounding, and the environmental consequences of, the breach of the Directive, would be wholly disproportionate.

The Ireland case

17 The Court of Justice would no doubt have had such considerations well in mind when it said, in the *Ireland* case [2008] ECR I-4911, para 57:

> "While Community law cannot preclude the applicable national rules from allowing, in certain cases, the regularisation of operations or measures which are unlawful in the light of Community law, such a

possibility should be subject to the condition that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception."

18 In para 61, the Court of Justice said that Ireland had failed to comply with the requirements of the Directive:

"by giving to retention permission, which can be issued even where no exceptional circumstances are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development".

Those passages seem to me to be an express recognition by the Court of Justice that, subject to certain conditions, there may be exceptional circumstances in which a retention permission may be granted for EIA development.

19 In his oral submissions, Mr McCracken referred us to *von Colson v Land Nordrhein-Westfalen* (Case C-14/83) [1984] ECR 1891 for the proposition that, for national sanctions to be effective in ensuring compliance with a fundamental principle of the treaty, they must have a deterrent effect: see paras 23, 28 and 29 of the Court of Justice's judgment.

20 In that case the court was satisfied of the need for a deterrent effect in a very different legislative context—that of employment law. Ensuring that the conditions referred to by the Court of Justice in the *Ireland* case [2008] ECR I-4911 are complied with and that any retrospective planning permission is the exception would have some deterrent effect. The short answer to this point is that the Court of Justice *might* have said that the need to deter developers from breaching the Directive was such that it was necessary that regularisation by way of a retrospective planning permission should not be permissible under national rules under any circumstances whatsoever, but it did not do so.

21 Mr McCracken referred to various differences between the planning procedures in Ireland and the United Kingdom and submitted that the system in Ireland was stricter than that in the United Kingdom. Such differences are, in my judgment, of no consequence, given the Court of Justice's recognition of the principle in paras 57 and 61 of its judgment that, subject to certain conditions, national law may permit the regularisation of an unauthorised EIA development.

Stop notice

22 Although it is arguably too late to serve a stop notice, the court would have power, in an appropriate case, to grant injunctive relief. However, once it is accepted that retrospective planning permission for unauthorised development is permissible in principle (subject to certain conditions), there is no substance in the claimant's further submission before the judge that the local authority was bound to issue a stop notice and not merely to issue an enforcement notice. The latter was sufficient to ensure the removal of the unauthorised EIA development if retrospective planning permission was not granted either by the local authority under section 73A, or by the Secretary of State under section 177 in response to any appeal against the enforcement notice by the interested party.

Article 2(3) of the Directive

23 Article 2(3) of the Directive (transposed by regulation 4(4) and (4A) of the 1999 Regulations (as amended)) provides:

> "Without prejudice to article 7, member states may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive. In this event, the member state shall: (a) consider whether another form of assessment would be appropriate; (b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it; (c) inform the commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals. The commission shall immediately forward the documents received to the other member states. The commission shall report annually to the Council on the application of this paragraph".

24 In 2006 the European Commission gave guidance as to the circumstances in which article 2(3) may be invoked: *Clarification of the Application of Article 2(3) of the EIA Directive*.

25 In the claimant's skeleton argument it was submitted that, by reference to the commission's guidance, this was not an exceptional case for the purposes of article 2(3), and in any event the conditions of sub-paragraphs (a) to (c) of that article had not been met. Both the local authority and the interested party acknowledged that the conditions in sub-paragraphs (a) to (c) had not been complied with, but submitted that this was not an article 2(3) case. I agree with that submission. In my judgment, article 2(3) is not relevant for present purposes; it is not concerned with the circumstances in which, exceptionally, national law may permit the regularisation of an unauthorised project which *is* subject to the requirements of the Directive. Instead, it defines the circumstances in which specific projects may be exempted from the requirements of the Directive. In such exceptional cases, the need for an environmental impact statement is dispensed with, and there need be no assessment unless the member state considers that "another form of assessment would be appropriate".

26 Although the Court of Justice referred to article 2(3) when setting out the provisions of the Directive in the *Ireland* case [2008] ECR I-4911, there is nothing in its decision to suggest that when it referred to "the exception" or "exceptional circumstances" in paras 57 and 61 of its judgment it was referring to "exceptional cases" within article 2(3). The Court of Justice could have said that regularisation could be lawfully effected only by the application of article 2(3), but it did not do so. Had article 2(3) been thought to have been relevant to the regularisation of EIA development, which had been carried out in breach of the requirements of the Directive but which was subject to the requirements of the Directive, then the commission's guidance would have been highly material, but it is nowhere referred to in the Court of Justice's judgment. In this respect, I consider that the position following the Court of Justice's decision is acte claire and there is no need for a reference in respect of article 2(3) as submitted by the claimant.

The planning permissions

27 In [2009] Env LR 698, para 102 the judge said that retrospective planning permission could lawfully be granted for EIA development provided the decision-taker, whether the local planning authority or the Secretary of State, made it plain "that a developer would gain no advantage by pre-emptive development and that such development will be permitted only in exceptional circumstances."

28 In para 103 the judge referred to the approach to be adopted by the Secretary of State on an appeal against an enforcement notice, but his observations are equally applicable to a local planning authority considering an application under section 73A of the 1990 Act:

> "The [decision-taker] can and in my view should also consider, in order to uphold the Directive, whether granting permission would give the developer an advantage he ought to be denied, whether the public can be given an equal opportunity to form and advance their views and whether the circumstances can be said to be exceptional. There will be no encouragement to the pre-emptive developer where the [decision-taker] ensures that he gains no improper advantage and he knows he will be required to remove his development unless [he] can demonstrate that exceptional circumstances justify its retention."

29 I acknowledge that the United Kingdom legislation is broadly similar to, and indeed in certain respects somewhat less stringent than, Ireland's Planning and Development Act 2002 which was considered by the Court of Justice in the *Ireland* case [2008] ECR I-4911. It may, therefore, be necessary for the United Kingdom Government to consider whether amending legislation should be enacted. In the meantime, however, it is perfectly possible to interpret existing United Kingdom law so as to secure conformity with EU law as declared by the Court of Justice in the *Ireland* case.

30 Mr McCracken submitted that conformity had to be secured by way of an enactment; it was not possible to rely on administrative or judicial practice. In support of this submission he cited *Commission of the European Communities v Italian Republic* (Case C-58/90) [1991] ECR I-4193. However, in that case the national law in question was expressly discriminatory, and thus any administrative or judicial practice to the contrary would, as the court pointed out, simply cause an "ambiguous state of affairs" for the persons concerned.

31 In those circumstances it is not surprising that it was concluded that Italian law could not be interpreted so as to be in conformity with the requirements of Community law. In the present case, by way of contrast, there is a discretion to grant retrospective planning permission conferred by section 73A and section 177 of the 1990 Act, but there is no requirement that planning permission shall be granted. It is therefore perfectly possible for the decision-taker to ensure that the discretion is exercised so as to conform with the Court of Justice's judgment. To that end, I would endorse those passages which I have set out in paras 27 and 28 above: [2009] Env LR 698, paras 102 and 103. They accord with the court's judgment in the *Ireland* case and, if the decision-taker exercises his discretion in accordance with that guidance, there will, in my judgment, be no breach of EU law.

A **32** If Lloyd and Jacob LJJ agree with this conclusion then the lawfulness of the two permissions subsequently granted by the local authority is a matter for the Administrative Court to decide in the judicial review proceedings applying the approach to the Directive set out above.

LLOYD LJ

33 I agree.

B

JACOB LJ

34 I also agree. I will just add a few words. First, I think it follows from what Sullivan LJ has said that we were regarding this case as acte clair, so that any question of reference to the Court of Justice of the European Union does not arise.

C **35** Second, I would make this observation about the contentions advanced by Mr McCracken. They are so extreme that, even in a case where the environmental benefit of a project is unarguably great, it would be necessary to undo the project (if that were possible) however undesirable that might be. That is such an absurd position that I cannot believe it to be EU law.

36 Finally, I would say a word about the United Nations Economic Commission for Europe Aarhus Convention of 25 June 1998. This is an D international convention to which the EU is a party; its title is the Convention on the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (United Nations Treaty Series, vol 2161, p 447). Because the EU is a signatory to the Convention, Mr McCracken argues that it has direct effect.

37 I am content to assume that for the moment, but it does not assist Mr McCracken because the provision he invoked has nothing whatever to E do with this case at all. It arises under article 9, headed "Access to Justice". That contains a number of provisions about access to justice and the need for speed and low cost. The provision which Mr McCraken relied on particularly is article 9(4). I should perhaps read article 9(3) as well:

> "3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each party shall ensure that, where they F meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.
>
> "4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide G adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible."

38 The whole of this is about access to justice and not about how, once H access to the court or to the administrative bodies is provided, the actual case is dealt with. It has nothing whatever to do with the current subject.

Appeal dismissed.

GERALDINE FAINER, Barrister