

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)*

Delivered: **28/06/2006**

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**IN THE MATTER OF AN APPLICATION BY MARGARET O'CONNOR  
FOR JUDICIAL REVIEW**

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**Before Nicholson LJ and Sheil LJ**

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**NICHOLSON LJ**

**Introduction**

[1] By Notice of Motion dated 8 February the appellant has applied to the Court of Appeal for a direction that the Notice of Appeal in the above matter be served upon the Attorney General for England and Wales pursuant to Order 59 Rule 8 of the Rules of the Supreme Court (Northern Ireland) 1980.

[2] Order 59 Rule 8 provides:-

“(1) The Court of Appeal may in any case direct that a notice of appeal or respondent's notice be served ... on any person not party to the proceedings.”

Such a direction will only be made where there are good reasons for doing so.

[3] The Notice of Motion is grounded on the affidavit of Nicola Harte, a solicitor in the firm of Harte, Coyle, Collins, Solicitors on the record for the appellant. In it she refers to correspondence between Stephen Leach, Director of the Criminal Justice Directorate, Massey House, Stormont, Belfast and David Brummell, Legal Secretary to the Law Officers, Attorney General's Chamber, 9 Buckingham Gate, London. She further refers to correspondence with the Attorney General.

[4] The Attorney General for England and Wales is also Attorney General for Northern Ireland.

[5] **Submissions on behalf of the appellant**

(i) The Attorney General as the Law Officer with ultimate responsibility for the PPS and CPS has a responsibility to explain the rationale behind the differing approaches of the two prosecution authorities as [he] bears ultimate responsibility for those decisions and this disparity in approach.

(ii) The judgment of Girvan J has ruled that the state is acting unlawfully, either in Northern Ireland or in England and Wales. In those circumstances it is incumbent upon the Attorney General to clarify the Government's view in relation to this issue.

(iii) The case raises a point of European law which the appellant submits requires a reference to the European Court of Justice. In the circumstances it is appropriate that the Attorney General be joined as a respondent at this stage.

(iv) The CPS which operates in Great Britain had not designated as a public service post the job for which the appellant applied to the PPS in Northern Ireland. Here it has been designated as a public service post and, therefore, not open to the appellant. The Attorney General is the superintending Minister and only he can answer for the State.

[6] **Submissions on behalf of the respondent**

(i) The appellant's candidature had been rejected on the ground that she was ineligible for appointment by virtue of the post having received a "public service" designation under Article 39(4) of the Treaty of Rome.

(ii) The arguments set out at paragraph [5](1) and (2) above amounted to a contention that the Attorney General was under a duty to provide some explanation or clarification to the court.

(iii) There was no legal obligation so to do.

(iv) None was identified by the appellant and none existed.

(v) Personal opinions and proffered explanations for alleged anomalies had no part to play in resolution of issues of law.

(vi) There was no finding in the judgment of Girvan J that the designations given to posts by the CPS were unlawful; the comments invoked by the appellants which were contained in paragraph 28 of the judgment were obiter dicta.

(vii) The undeveloped suggestion that there should be a reference to the ECJ did not constitute a ground upon which the relief sought should be granted.

(viii) The appellant's case was proceeding against two public authorities.

(ix) Joinder of the Attorney General was not required by any statutory provision or rule of court or legal principle and was unnecessary, not least as the Attorney General plainly objected to becoming involved in the litigation; see the letter from Ms Lane of 20 January 2006.

[7] **Submissions on behalf of the Attorney General**

(i) The legality of the actions taken by Northern Ireland public bodies was being challenged.

(ii) The decisions were made within Northern Ireland and the decision-making bodies were the respondents in these proceedings.

(iii) The Court of Appeal should deal only with the judgment of Girvan J. It had a statutory jurisdiction to hear appeals, not an original jurisdiction.

(iv) The Attorney General was not involved in the day-to-day operations of the CPS or the PPS. He was not involved in any decision of the CPS or the PPS to designate a post as a public service post or otherwise. He had no role to play in their policy.

(v) The issue before the court was whether or not the Northern Ireland decision-maker made the correct decision; whether the decision was lawful or unlawful.

(vi) The Attorney General did not wish to intervene or to be made a party. If there was a reference to the European Court of Justice the Government would then consider whether it would intervene.

**Reply**

[8] Counsel for the appellant reiterated that the issue which the appellant sought to open was whether the State was acting unlawfully in adopting a particular policy in Northern Ireland. The State was the relevant decision-maker.

**Conclusions**

[9] In his capacity as Attorney General for England and Wales the Attorney General superintends the work of the CPS but plays no part in

decision-making as to what posts are designated as public service posts. As Attorney General for Northern Ireland he supervises the work of the PPS but plays no part in decision-making as to what posts are designated as public service posts.

[10] We find no force in the argument that the Attorney-General should be required to explain anomalies in the designation of posts in the different organisations. Nor do we consider that any explanation for an anomaly will assist the court in deciding whether the decision-maker in Northern Ireland was right or wrong. Explanations by persons not party to the decision to designate posts as public service posts in the PPS in Northern Ireland will not assist the court. If there is a reference to the European Court of Justice then, and only then, will the British Government will have to consider whether it should intervene.

[11] For the reasons which we have given at paragraph [9] and [10] we decline to order that the Attorney General of England and Wales be made a party to these proceedings.

[12] We received additional arguments in writing after the hearing. We do not consider that they have any relevance to the decision which we have reached. But if any of the parties wish to address us on whether a devolution notice should be served we will, of course, hear them on the point.