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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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IN THE MATTER OF AN APPLICATION BY MARTIN MEEHAN FOR JUDICIAL REVIEW

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Before: Carswell LCJ, McCollum LJ and Campbell LJ

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CARSWELL LCJ

[1] The appellant in this appeal seeks judicial review of a decision of the Secretary of State for Northern Ireland, refusing to remove the statutory prohibition contained in Article 22 of the Firearms (Northern Ireland) Order 1981 (the 1981 Order) against his purchasing, acquiring or having in his possession a firearm or ammunition. His application was dismissed by Kerr J in a written judgment given on 19 July 2002 and the appellant appealed to this court on a number of grounds.

[2] By Article 3 of the 1981 Order it is an offence, subject to certain exceptions not material to this case, to possess, purchase or acquire a firearm or ammunition without holding a firearm certificate. Firearm certificates may be granted by the Chief Constable, on the terms set out in Article 28. Article 28(2) provides in the case of residents of the United Kingdom that –

> "a firearm certificate shall not be granted unless the Chief Constable is satisfied that the applicant –
>
> (i) is not prohibited by this Order from possessing a firearm, is not of intemperate habits or unsound mind and is not for any reason unfitted to be entrusted with a firearm; and
>
> (ii) has a good reason for purchasing, acquiring or having in his possession

the firearm or ammunition in respect of which the application is made; and

(iii) can be permitted to have that firearm or ammunition in his possession without danger to the public safety or to the peace."

A right of appeal lies under Article 28(10) to the Secretary of State.

[3] Article 22(1) and (2) contain a prohibition on the purchase, acquisition or possession of a firearm in the following terms:

> "**22.**-(1) Subject to paragraph (6), a person who has been sentenced to preventive detention, or to either imprisonment or corrective training for a term of three years or more, shall not at any time purchase, acquire or have in his possession a firearm or ammunition.
>
> (2) Subject to paragraph (6), a person who has been sentenced to borstal training, to detention in a young offenders centre, to corrective training for less than three years or to imprisonment for a term of three months or more but less than three years, shall not at any time before the expiration of the period of eight years from the date of his conviction, purchase acquire or have in his possession a firearm or ammunition."

Article 22(6) goes on to provide:

> "(6) A person prohibited under paragraph (1), (2) or (3) from purchasing, acquiring or having in his possession a firearm or ammunition may apply to the Secretary of State under Article 55 to remove the prohibition, and, if the application is granted, the prohibition shall not then apply to that person."

Under Article 55 the Secretary of State on such application may make such order as he thinks fit having regard to the circumstances.

[4] The Secretary of State, following the practice of his predecessors adopted in or about 1988 or 1989, applied the policy set out in the Northern

Ireland Office publication, Notes for Guidance on making applications under Article 22(6):

> "In those cases where an applicant is subject to a life prohibition, the Secretary of State will not consider removal of the prohibition within 15 years of the applicant's release from prison, unless there are exceptional circumstances for doing so."

The validity of following this policy was recently considered by Kerr J in *Re Blaney's Application* [2003] NIQB 51, where he upheld it as promoting the policy of the legislation. The correctness of that decision and the adoption of the policy were not challenged in the present appeal.

[5] The appellant described himself in paragraph 1 of an affidavit sworn by him in cognate proceedings for judicial review in the following terms:

> "I am a prominent member of Sinn Fein. I am a member of the Six County Executive of Sinn Fein and I hold the position of Six County Organiser of Sinn Fein. I am also a member of Sinn Fein's Ard Comhairle or national executive."

He has three previous convictions material to his entitlement to hold a firearm certificate. In 1972 he was sentenced to three years' imprisonment for membership of the IRA. In 1980 he was convicted of false imprisonment and sentenced to 12 years' imprisonment. In 1988 he was again convicted of false imprisonment and on this occasion was sentenced to 15 years' imprisonment. The 1980 conviction arose out of the seizure of a young man suspected by the defendants of being an informer. He was held and restrained by a number of men in three different houses in Belfast until he was rescued by the Army some four days later. The 1988 conviction was founded upon the capture by a hostile crowd in the early hours of 12 July 1986 of a young member of the Territorial Army off duty. He was detained in a house in the Ardoyne area, bound and blindfolded, interrogated and seriously assaulted. He was discovered and released in the afternoon of 12 July by soldiers taking part in a large rescue operation. Each of these three offences would have triggered the lifetime prohibition provided for in Article 22(1) of the 1981 Order. The seriousness of both offences of false imprisonment appears very clearly from the accounts of those cases given in the law reports.

[6] The appellant was released on licence in 1994, and since then has, as he himself recounted, been very actively engaged in the Sinn Fein cause. The evidence before the court was that he had received a number of death threats both before and after the application was made to the Secretary of State on his

behalf under Article 22(6). Those received around the time of the application were summarised by the judge in paragraph 25 of his judgment:

> "… (1) from a loyalist organisation made through the confidential telephone service on 21 May 2001 (and communicated to the applicant by police on 22 May 2001); the caller was female and she said that the applicant would be assassinated if he went into South Antrim during the following two weeks; (2) from the Red Hand Defenders communicated to a journalist on the Belfast Telegraph on the same date – it was to the same effect *viz* that he would be killed if he was seen electioneering in South Antrim; (3) his name was discovered on a computer disc owned by a person who was believed to have an association with a loyalist paramilitary organisation; and (4) on 25 September 2001 he was informed that an anonymous female caller had telephoned the RUC confidential telephone line the previous day and stated that the Red Hand Commandos would assassinate the applicant and his son."

In each instance the appellant was informed of the threat and he was offered advice for his personal safety. There was also evidence that an attack had been prepared on the appellant's house in January 2001 and that one was mounted in July 2001 on his son's house. The police conducted inquiries into the making of the threats and charged a person in relation to the discovery of the computer disc. Work was carried out at public expense on the appellant's house under the Key Persons Protection Scheme in order to give protection against attack or intrusion.

[7] By letter dated 1 June 2001 the appellant's solicitors made application to the RUC on his behalf for a firearm certificate to enable him to procure and possess a personal protection weapon. Following the submission of an application form on 3 June, the police refused the application by letter of 6 June 2001, on the ground that the appellant was a prohibited person under Article 22 of the 1981 Order. After some correspondence the solicitors made a formal application to the Secretary of State on 19 June for removal of the statutory prohibition on the appellant. The grounds on which they relied were set out in a covering letter, as follows:

> "1. Our client's life is in imminent danger. He has received numerous threats to his life from Loyalist paramilitaries and there have been numerous attempts on his life and the

lives of members of his family. The most recent of these was received only yesterday.

2. While our client avails of the Key Person's Protection Scheme, this is of no benefit while our client is not at home. Some of the threats have been specific and have related to our client working in South Antrim, an area where he was electioneering until the recent elections.

3. Our client was elected to Antrim Borough Council in the local government elections held on 7th June. This has substantially increased his public profile. Given that threats have already been made in relation to election work in this area, we submit that this risk is significantly increased now that our client has been elected. Indeed our client was recently informed that Loyalist protests would be made should he attend the first meeting of the council on Thursday 21st June.

4. The threat to our client's life represents a threat to the democratic process itself. Our client is an elected representative of the people of Antrim Borough Council and we submit that in order to protect his life while carrying out his duties as a councillor he will require a firearms certificate.

5. Our client is now an elected representative of the people of Antrim Borough Council. We submit that this fact demonstrates that our client is a suitable person to hold a firearms certificate.

6. Our client's last conviction was on 12th July 1986, nearly 15 years ago. His release from prison was 20th January 1994. We submit however that for the reasons outline above, and in particular the threat to our client's life, that there are exceptional circumstances for his allowing his application."

The solicitors were assured that the matter was being dealt with as quickly as possible, but the decision of the Secretary of State was not issued until a letter was sent on 11 October 2001, stating as follows:

> "After careful consideration of all the circumstances of your client's case, the Secretary of State has decided not to remove the prohibition at this time.
>
> In arriving at his decision the Secretary of State took into account the seriousness of Mr Meehan's criminal record and the fact that his period of release from prison on licence ended on 21 July 2001. He also took into account the fact that the Chief Constable had no specific intelligence of a serious terrorist threat to Mr Meehan's life, the criterion by which he judges whether a person should be permitted to have a personal protection weapon. This is quite a different matter from the general intelligence and significant threat which led to Mr Meehan's admission to the Key Persons Protection Scheme."

[8] The reasons set out in the decision letter were amplified in an affidavit sworn on 29 November 2001 by Eric Kingsmill, an officer in the Northern Ireland Office with responsibility for the Firearms and Explosives Branch of the Police Division of the NIO. The application was decided by a minister on behalf of the Secretary of State, and he had before him advice contained in a submission dated 9 October 2001, which was before the court. Paragraphs 9 to 12 of the submission, headed "Analysis and Recommendation", read as follows:

> "9. The Chief Constable tells us that he has no specific intelligence from his own sources of a serious terrorist threat to Mr Meehan's life, the criterion by which he decides whether a person should be permitted to have a personal protection weapon (PPW). A specific threat may also be implied if there is evidence of an attempt on an applicant's life. This is quite a different matter from the general intelligence and significant threat which led to Mr Meehan's admission to the KPPS.
>
> 10. In addition, police consider that Mr Meehan represents a considerable risk to public safety by virtue of his criminal record and we would share

> that view. One might disregard the IRA membership convictions in 1972 but the false imprisonment/kidnapping convictions in 1980 and 1988, which are offences involving violence, cannot be easily set aside. As the police point out, Mr Meehan was on licence until 21 July 2001 and had he been convicted of another offence he could have returned to prison to finish the remaining 7½ years of his sentence. That would have been a considerable incentive to him to be on good behaviour since his release in 1994.
>
> 11. In view of Mr Meehan's high political profile and notoriety there may have been a threat to his life from loyalist paramilitaries but, even if it were enough to warrant a PPW, we do not believe that his need outweighs the potential threat to public safety that his possession of a PPW would represent.
>
> 12. Taking all factors into account there are no exceptional circumstances which would lead the Secretary of State to consider removing the prohibition sooner than the minimum 15 year period, which will end in January 2009. Moreover leaving aside altogether the issue of exceptional circumstances there appears to be no compelling reason for exercising the discretion conferred by Article 22 of the 1981 Order in Mr Meehan's favour. In the absence of specific police intelligence to indicate a serious terrorist threat to Mr Meehan's life and in view of his criminal record containing serious offences of violence, I recommend that his application should be refused."

The minister agreed with this recommendation and accepted it. Mr Kingsmill summarised in paragraph 6 of his affidavit of 29 November 2001 the material contained in the submission which the minister took into account relating to the degree of threat to the appellant:

> "6. In the context of the decision making process the views of the police were obtained as well as the views of the branch of Government which administers the Key Persons Protection Scheme. Notably the Chief Constable's view was

> that he had no specific intelligence from his own sources of a serious terrorist threat to the Applicant's life and that, if the prohibition were to be removed and the Applicant applied for a personal protection weapon, he would not meet this criterion. A threat based on specific intelligence of the type just mentioned is to be distinguished from a threat based on general intelligence which may lead, as it did in the Applicant's case, to admission to the Key Persons Protection Scheme."

[9] The appellant relied on a variety of grounds in his grounding statement, and a number of these was argued before the judge and dealt with in his judgment. On appeal the appellant relied on most of these in his skeleton argument, though in oral argument Mr Treacy QC focussed mainly on the issues arising out of the impact of Article 2 of the Convention. As presented in his skeleton argument and refined in his presentation to the court, his submissions may be summarised as follows:

(a) The judge applied the wrong test in determining the threshold of risk which must be established for the appellant's Article 2 rights to be engaged.

(b) The Secretary of State's approach to the exercise of his discretion should have been modified in light of the applicability of Article 2.

(c) The Secretary of State's discretion was fettered by the requirements (i) of a specific threat and (ii) that it be founded on a Special Branch intelligence assessment.

(d) The Secretary of State wrongly took into account two factors:

  (i) the attempts on the appellant's life;
  (ii) the relevance of the appellant's release from prison on licence.

(e) The judge wrongly held that there must be evidence of contemporary threats to the appellant's life.

(f) The Secretary of State failed to make a proper assessment of the risk to the public if the appellant were granted a firearm certificate.

[10] The judge dealt fully and carefully with each of these submissions, which tend to run into each other, and in respect of a number of them it is not

necessary for us to do more than refer to his judgment and indicate our agreement with his reasoning.

[11] The Secretary of State was in our view entitled to adopt a policy whereby he determined the level of risk required to entitle applicants to firearms certificates for personal protection weapons, so long as he maintained the requisite degree of flexibility of consideration, ie he did not "fetter his discretion". We are satisfied, for the reasons set out in paragraphs 16 to 19 of the judge's judgment, that he did maintain that flexibility. It was in our opinion legitimate, subject to the Article 2 question which we shall discuss later, for the Secretary of State to adopt the threshold criterion of specific intelligence of a particular threat – if indeed he did himself adopt this: see paragraph 29 of the judgment of Kerr J. For the reasons set out by the judge in paragraphs 30 to 34 of his judgment we consider that the existence and significance of the threat to the appellant were properly considered and weighed against the criterion by the Secretary of State, by reference to the correct factors.

[12] We also consider that the suggestion that the Secretary of State gave no consideration to the risk posed to the public if the appellant were permitted to hold a personal protection weapon is misplaced. It appears to us quite obvious that that risk was uppermost in his consideration of the question. As Ms Downey stated in paragraphs 10 and 11 of her submission, the appellant had been convicted of violent terrorist offences of a very serious nature. That must necessarily cause anyone considering the grant of a firearm certificate to him to have grave doubts whether he could be trusted to have a lethal weapon which could be used by anyone who might gain access to it in ways capable of creating substantial danger to other persons. The Secretary of State was in our view quite entitled to consider, as one answer to the suggestion that the appellant had behaved peaceably since his release from prison, that he had every incentive to do so, since he had been on licence until early 2001. We do not find any fault with the approach of the Secretary of State to these questions, and we agree with the learned judge's conclusion on each issue.

[13] We cannot accept that the judge was in error in referring to the need to find the existence of a contemporaneous threat to the appellant's life. A citizen may be given a firearm certificate to hold a personal protection weapon in order to protect himself against a threat to his life. The authorities are entitled to restrict the issue of certificates in such circumstances to cases where the threat to life is real and immediate, and to regard the threat as otherwise insufficiently grave to justify allowing citizens to arm themselves with lethal weapons. We do not consider that it is wrong to suppose that in order to qualify the threat must be contemporaneous. On the contrary, it seems to us inherent in the policy that it is not a threat of sufficient gravity to warrant the issue of a firearm certificate if it relates only to a period which is

past and is not established to be recent or persisting. We consider that that is all the judge intended to convey, and that he was quite justified in doing so.

[14] It was submitted on behalf of the appellant that the Secretary of State's decision to refuse the grant of a firearm certificate constituted a breach of his rights under Article 2 of the Convention, which prescribes that "Everyone's life shall be protected by law." Mr Treacy argued that the correct test for the court to apply in considering the issue whether Article 2 is engaged is that which was formulated in paragraph 31 of the decision of the Court of Appeal in *Lord Saville of Newdigate v Widgery Soldiers* [2001] EWCA Civ 2048, whereas Mr Morgan QC for the respondent submitted that it was the test of real and immediate risk to life contained in paragraph 116 of the judgment of the European Court of Human Rights in *Osman v United Kingdom* (1998) 29 EHRR 245. The judge held in the present case (paragraph 24 of his judgment) that whatever test was used, the appellant had not established a breach of Article 2.

[15] It is difficult to avoid the conclusion that this is a debate in which the opposing arguments never properly engage with each other, which leads one to question the validity of the approach adopted by those propounding them. The issues in the cases in which the differing tests were applied were quite disparate, and the usefulness of the tests as universal criteria may be doubted.

[16] In *Osman v United Kingdom* a schoolteacher attacked a pupil to whom he had formed an attachment and his father, wounding the pupil and killing his father. It was claimed by the pupil's mother that the state had failed to protect the lives of the victims and prevent the harassment of their family. The domestic courts held that no cause of action lay and the applicant brought a complaint to the ECtHR. In paragraphs 115-6 of its judgment the Court defined the limits of the positive obligation of a state to safeguard the lives of its citizens:

> "115. The Court notes that the first sentence of Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in

certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. The scope of this obligation is a matter of dispute between the parties.

116. For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Article 5 and 8 of the Convention.

In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The Court does not accept the Government's view that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must be tantamount to gross negligence or wilful disregard of the duty to protect life. Such a rigid standard must be

> considered to be incompatible with the requirements of Article 1 of the Convention and the obligations of Contracting States under that Article to secure the practical and effective protection of the rights and freedoms laid down therein, including Article 2. For the Court, and having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case."

[17] The issue in *Lord Saville of Newdigate v Widgery Soldiers* was the validity of the decision of the Saville Tribunal to require certain soldiers called to give evidence to appear in Londonderry for that purpose, they having requested that their testimony should be given in another location. The Tribunal applied the *Osman* test and concluded that there was not "a real and immediate risk to life". On an application for judicial review of this decision the Administrative Court held that it should rather follow the approach adopted by the Court of Appeal in the earlier cognate case of *R v Lord Saville of Newdigate, ex parte A* [1999] 4 All ER 860. In the latter case the issue was whether soldier witnesses at the Tribunal should be given anonymity. In a decision given before the Human Rights Act 1998 came into operation, but which attributed considerable importance to the right to life as a fundamental right, the court held the Tribunal's decision to refuse anonymity to be unlawful. In so far as it propounded a criterion it adopted the approach of Lord Diplock in a different context in *Fernandez v Government of Singapore* [1971] 2 All ER 691 at 697 that there had to be a serious possibility of the event happening, which was interpreted by the Administrative Court in *Lord Saville of Newdigate v Widgery Soldiers* as meaning that there had to be "a real possibility of risk". On appeal to the Court of Appeal the court declined to become involved in a semantic dispute about the level of risk. Lord Phillips MR, giving the judgment of the court, stated in paragraphs 28-9:

> "28. … The search for a phrase which encapsulates a threshold of risk which engages Article 2 is a search for a chimaera. The phrases advanced by Mr Clarke were all taken from decisions involving contexts quite different from the present. These decisions provide no authoritative basis for adopting the phrases as a threshold test for Article 2 purposes. Of one thing

we are quite clear. The degree of risk described as `real and immediate' in *Osman*, as used in that case, was a very high degree of risk calling for positive action from the authorities to protect life. It was `the real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party' which was, or ought to have been, known to the authorities. Such a degree of risk is well above the threshold that will engage Article 2 when the risk is attendant upon some action that an authority is contemplating putting into effect itself. It was not an appropriate test to invoke in the present context.

29. In *ex parte A* at p.1877 Lord Woolf said:

> `… the right approach here, once it is accepted that the fears of the soldiers are based on reasonable grounds, should be to ask: is there any compelling justification for naming the soldiers, the evidence being that this would increase the risk?'

The reference to reasonable grounds was, as we understand it, to grounds that were objectively reasonable, but Lord Woolf had earlier commented at p.1876:

> `From their point of view it is what they reasonably fear which is important, not the degree of risk which the Tribunal identifies.'"

After referring in paragraph 30 to the soldiers' subjective fears, Lord Phillips continued at paragraph 31 in a passage relied upon by the appellant in the present case:

> "31. We consider that the appropriate course is to consider first the nature of the subjective fears that the soldier witnesses are likely to experience if called to give evidence in the Guildhall, to consider the extent to which those fears are objectively justified and then to consider the extent to which those fears, and the grounds giving rise to them, will be alleviated if the soldiers give their

> evidence somewhere in Great Britain rather than in Londonderry. That alleviation then has to balanced against the adverse consequences to the inquiry of the move of venue, applying common sense and humanity. The result of the balancing exercise will determine the appropriate decision. This course will, we believe, accommodate both the requirements of Article 2 and the common law requirement that the procedure should be fair."

[18] In our opinion it is useful to focus, as did the judge in the present case, on whether a breach of Article 2 has been established rather than concentrating on the question whether Article 2 has been engaged. Of course if Article 2 has not been engaged at all, there cannot be a breach, but a decision that it has been engaged does not necessarily provide a conclusive answer to the question whether the State has been in breach of the requirements of the Article. We respectfully agree with the approach of the Court of Appeal in *Lord Saville of Newdigate v Widgery Soldiers,* which in our view is not inconsistent with that of the ECtHR in *Osman v United Kingdom.* The court should ascertain the extent or degree of risk to life, take into account whether or not that risk has been created by some action carried out (or proposed) by the State, determine whether it would be difficult for the State to act to reduce the risk and whether there are cogent reasons in the public interest why it should not take a course of action open to it which would reduce the risk. It should then balance all these considerations in order to determine whether there has been a breach of Article 2.

[19] One may test the validity of this approach by looking at the decision in the two cases to which we have just referred. In *Osman* the risk to the victims was not created by any action of the public authority, the Metropolitan Police, in whose area the attack took place. The ECtHR took into account two factors, the degree of threat and the difficulty of taking preventive action. That difficulty does not appear to have been especially great, and there is no suggestion in the case that it would have been particularly onerous to take steps to deal with the threat once the need to act became apparent. The Court was, however, concerned with the other factor, recognising that the police could not be expected to put in place precautionary measures on every occasion when the existence of some degree of threat may or should become known to them. It quantified the degree of risk which should trigger such action as a real and immediate risk to life, and held on examination of the circumstances of the case that it had not been established that there was any stage at which the police knew or should have known of the existence of such a degree of risk. It therefore held that no breach of Article 2 had occurred.

[20] The factors were altogether different in the *Widgery Soldiers* case. There the potential risk to the soldiers was created by the proposal of the Tribunal to

require them to give evidence in Londonderry, where they would be more vulnerable to possible attack than if their testimony was received elsewhere. The Court of Appeal considered the reality of the subjective fears of the soldiers and assessed the objective level of risk, taking into account their vulnerability and the difficulty of guarding them effectively in Londonderry, and addressed the question of the extent to which those fears would be allayed if they gave evidence elsewhere. It also took into account the adverse consequences to the work of the Tribunal of a change of venue, in terms both of the practical difficulty and expense involved, and the importance for the confidence of the public in the Tribunal that it should take evidence on the spot in Londonderry. Having balanced all these factors, the court decided that the Tribunal's ruling requiring the soldiers to give evidence in Londonderry was in breach of their Article 2 rights.

[21] If one applies a comparable approach to the present case, it seems to us that the factors to be considered may be ranked as follows:

(a) The degree of risk to the appellant's life created by the threats and other acts of those hostile to him. In assessing these it is legitimate to take into account the temporal immediacy of such threats or attacks. If the Chief Constable is to allow a private citizen to possess and carry a firearm for his personal protection – which involves the consequence that he or others may use it with lethal intent and result against another person – it is in our view legitimate for him to require that that threat should be of a real and immediate nature. In referring to the need for contemporaneity the judge was in our view merely using a synonym for the test of immediacy.

(b) It is relevant to consider the steps which the State has already taken to reduce the risk, together with the steps which it or the appellant could proceed to take, other than the issue of a firearm certificate.

(c) The difficulty involved in taking the action to reduce the risk requested by the applicant. In a case of this nature that is small in extent, consisting merely in issuing a firearm certificate.

(d) The possible adverse consequences to the public of such action, if taken. The risk to the public arising from the arming citizens with lethal weapons has to receive very careful attention The identity and antecedents of the applicant for a firearm certificate may be a very important consideration.

[22] The court then has to balance these considerations, bearing in mind that the risk to life has not been created by an act or omission of the State, but by outside forces. This was in effect the approach adopted by the judge in the present case and we find ourselves in basic agreement with his reasoning. He

took into account the level and immediacy of the threats to the appellant's life, the steps already taken in consequence of their being reported to the police and the degree of danger to the public if the appellant were given a firearm certificate for a personal protection weapon. He concluded that there was not a breach of Article 2 and we agree with that conclusion.

[23] We are of opinion therefore that the Secretary of State was entitled to make the decision which he reached, to refuse to remove the prohibition imposed by Article 22 of the 1981 Order, and that that decision did not involve a breach of Article 2 of the Convention. The appeal will accordingly be dismissed.