Neutral citation [2009] NIQB 66

Ref: **TRE7587**

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

Delivered: **8/7/09**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY CAOIMHIN MacGIOLLA CATHAIN FOR JUDICIAL REVIEW

AND IN A MATTER OF A DECISION BY THE NORTHERN IRELAND COURT SERVICE

AND IN THE MATTER OF THE ADMINISTRATION OF JUSTICE (LANGUAGE) ACT (IRELAND) 1737

TREACY J

Introduction

[1] By this application the applicant seeks relief against the Northern Ireland Court Service ("the respondent") in respect of its decision of the 20 February 2008 refusing the applicant permission to lodge a court application for an occasional liquor licence drafted in the Irish language.

[2] The grounds upon which the applicant has been granted leave to apply for judicial review are, in summary, first, that the Administration of Justice (Language) Act (Ireland) 1737 ("the 1737 Act") – which requires that, in Northern Ireland, all court proceedings and associated documents be in the English language – is incompatible with the European Charter for Regional and Minorities Language ("the Charter"), specifically Article 7(2), and as such is in breach of his legitimate expectation that the UK will act consistently with its international legal obligations under the Charter; and secondly that the prohibition under the 1737 Act of any language other than English in Courts breaches his rights under the European Convention on Human Rights and Fundamental Freedoms ("ECHR") and specifically Article 14 taken together with Article 6.

Factual background

[3] The applicant is one of the organisers of a music concert in the Culturlann MhicAdan O'Fiaich involving the group "Breag" who perform in the Irish language. According to the applicant the Culturlann is the foremost provider of Irish language events in the Belfast area. As well as hosting musical and other events it contains a bookshop and a restaurant and functions as a centre for the Irish language community in Belfast. He has deposed that Irish is spoken generally by the users of the Culturlann.

[4] The applicant was himself born and raised in Belfast using Irish as his first language and he also plays in the group Breag. The members of the group and the applicant's close friends all communicate with the applicant in Irish.

[5] As part of the organisation of the musical concert it was decided to apply for an occasional liquor licence and the applicant was designated to make that application. He advised his solicitor Michael Flanigan that he wished to make that application in Irish.

[6] The law and procedure governing applications for occasional licences are summarised in the affidavit of Geraldine Fee from which it is clear that the applicant for an occasional licence must be the holder of existing licence. It is common case that the applicant in this judicial review was not such a person.

[7] Six previous applications in respect of the premises of Culturlann MhicAdan O'Fiaich have been submitted since 1 January 2008. The applications were all granted. These applications were all made by Elizabeth Mulholland and Martin O'Hara who are the holders of a liquor licence. The applications were made in the English language and signed by the applicant's current solicitor. In respect of all those applications the organisers of the events to which the occasional licence is related, were Cait ui Sheanain and Geroid ui Sheanain who are officers of Culturlann MhicAdan O'Fiaich.

[8] It is also clear that the applicant is perfectly able to speak English and to conduct all aspects of legal proceedings in English.

[9] On 15 February 2008 the applicant's solicitor wrote to the Chief Clerk of Laganside Courthouse asking whether the application for such a licence would be accepted in Irish. On 20 February 2008 the Business Manager of Lagan Courts replied explaining that it was not possible to accept an application for an occasional licence in the Irish language which situation arose from the continuing applicability of the Administration of Justice (Language) Act (Ireland) 1737. Since this letter contains the impugned determination it is appropriate that I set it out in full:

"Dear Mr Flanigan

Thank you for your letter of 15th February 2008 about the lodgement of an application for an occasional licence in Irish.

All proceedings in the courts in Northern Ireland, including any documentation relating to those proceedings, must be in English. The requirement that court proceedings take place in English was imposed by the Administration of Justice (Language) Act (Ireland) 1737, which is still in force.

Could I also refer you to the 'Northern Ireland Court Service Code of Courtesy on the use of Irish in official business" issued in November 2005 and available on the Court Service website, i.e. ww.courtsni.gov.uk.

Section 24 of this Code sets out the position in respect of a request to use Irish in court proceedings, i.e. "All court proceedings must be conducted in English (except where an individual does not speak or understand English)"

I therefore have to confirm that if you lodge an application for an occasional licence in Irish it is not possible to accept it.

If I can be of any further assistance do not hesitate to contact me."

The 1737 Act

[10] The long title of the 1737 Act is:

> **"An Act that all proceedings in courts of justice within this kingdom shall be in the English language."**

[11] The preamble to the Act states:

> **"Whereas many and great mischiefs do frequently happen to the subjects of this kingdom from the proceedings of courts of justice being in an unknown language; those are summoned and impleaded having no knowledge or understanding**

> **of what is alleged for or against him in the pleadings of their lawyers and attorneys, who use a character not legible to any but persons practising the law."**

[12] Section 1 provides as follows:

> **"[1] All proceedings in courts of justice, patents, charters, pardons, commissions, &c. shall be in English. and in legible character, not in court-hand, and with usual abbreviations in English, and figures. Penalty £20 to prosecutor.**
>
> **To remedy those great mischiefs, and to protect the lives and fortunes of the subjects of this kingdom more effectually than heretofore from the peril of being ensnared, and brought into danger, by forms and proceedings in courts of justice in an unknown language, . . . all writs, process, and returns thereof, and proceedings thereon, and all pleadings, rules, orders, indictments, informations, … judgments, statutes, recognizances, ..and all proceedings relating thereunto, … and all proceedings whatsoever in any courts of justice within this kingdom, and which concern the law and administration of justice, shall be in the English tongue and language, and not in Latin or French, or any other tongue or language whatsoever,… "**

[13] The provisions of this Act mirror closely other legislation applying to courts in England, Scotland and Wales also introduced in the 1730s. This legislation prohibited the use of Latin, French and Court-hand (and any other language or tongue) which placed people without knowledge of these subjects at a disadvantage accessing the courts. By the end of the 19th century, the relevant Acts were repealed elsewhere within the United Kingdom. It was repealed in the Republic of Ireland following the foundation of the State. Northern Ireland is now alone in the British Isles in retaining legislation which requires all proceedings to be conducted in English.

[14] Legal provisions are now in place regarding the use of Welsh, Gaelic and Irish in the courts in **Wales**, **Scotland** and the **Republic of Ireland** respectively. Pursuant to the **Welsh Language Act 1993**, any party, witness or other person who desires to use it has the right to speak Welsh in court proceedings in Wales. Detailed arrangements are in place regarding the use of Welsh and translation of courts documents in connection with proceedings in County Courts, Magistrates' Courts and Crown Courts. In the case of

Scotland, limited rights to use Gaelic have been available since an Act of Court made by Sheriff Principal McInnes QC came into force on 1 July 2001. The rights afforded in Scotland to use Gaelic in courts are limited only to the Sheriff Courts which in geographical terms cover those areas where knowledge and use of Gaelic is most concentrated. They are limited to civil proceedings in those Sheriff Courts, are subject to requirement for notice and are also subject to judicial discretion where the Sheriff or Sheriff Principal may refuse an application if he considers that to grant it would hamper the proper administration of justice. There is also the **Gaelic Language** (**Scotland**) **Act 2005** pursuant to which a public body known as **Bord na Gaidhlig** was established with powers to require certain public authorities to prepare a Gaelic language plan setting out the measures taken by that authority in relation to the use of the Gaelic language in connection with the exercise of its functions. To date three such plans have been formally approved, three are in the course of preparation and it is anticipated that during 2008 a further six authorities will be asked to begin preparation of Gaelic language plans. The court has been informed that it is not anticipated that the Scottish Court Service will be asked to prepare a Gaelic language plan "in the near future". In the **Republic of Ireland** Article 8 of the Constitution provides that Irish is the national language and first official language of the State with English recognised as the second official language. Court documents may be filed in Irish and other documents such as notices and orders can be issued in Irish if requested. The detail surrounding the level of legal provision in respect of the use of Welsh, Gaelic and Irish in court procedure is very helpfully set out in the affidavit of Geraldine Fee who swore her affidavit as head of the Criminal Policy Division of the Northern Ireland Court Service. Referring to the 2001 census figures for Northern Ireland, Wales and Scotland relating to figures in relation to the knowledge of Irish, Welsh and Gaelic respectively Ms Fee states that it is apparent from the figures that some significant demographic differences exist between the use and knowledge of regional languages within Wales, Scotland and Northern Ireland. She has deposed that in the case of Wales there appears to be a substantially higher percentage of the overall population with knowledge of the language or who can speak it. In the cases of both Wales and Scotland she has averred that there are also districts where a very high percentage of the population have knowledge of and speak the regional language whereas in the case of Northern Ireland there are no districts with similarly high concentrations of people with knowledge of and who speak Irish. And at paragraph 8 she states that the information on the use of regional languages in courts in other jurisdictions which has been obtained by the Northern Ireland Court Service also shows differing levels of demand for the conduct of proceedings in those languages and that there are also different levels of resources already in place within some of those jurisdictions to deal with requests to use a regional language in courts. She concludes at paragraph 14 of her affidavit by stating:

> **"….. Different geographic and demographic circumstances arise in relation to the use of Irish, Welsh and Gaelic in those jurisdictions, than those which arise in relation to the use of Irish and Northern Ireland. In addition, administrative resources are also in place which assist with the implementation of the right to use the regional use in connection with court proceedings. In Wales and the Republic of Ireland the defined legal right to use the regional language in court proceedings also needs to be contextualised within the broader framework of the use of the regional language in public life generally. That broader framework in Northern Ireland is less developed, but is the subject of political debate and discussion."**

Belfast Agreement

[15] The Belfast Agreement (also known as the Good Friday Agreement), "the Agreement", was concluded on Friday 10 April 1998. The Agreement was given effect by a treaty between the UK Government and Government of Ireland. In this Agreement the UK Government made a number of commitments to promote the Irish language. These are contained with the section entitled "Rights, Safeguards and Equality of Opportunity, Economic, Social and Cultural Issues". Principally these commitments are:

> **"3. All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.**
>
> **4. In the context of active consideration currently being given to the UK signing the Council of Europe Charter for regional or minority languages, the British Government will in particular in relation to the Irish language, where appropriate and where people so desire it: take resolute action to promote the language;**
>
> **Facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;**

> **Seeking to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;**
>
> **Make provision for liaising with the Irish language community, representing their views to public authorities and in investigating complaints …"**

Council of Europe Charter for Regional or Minority Languages

[16] The Charter was adopted as a Convention by the Committee of Minister of the Council of Europe on 25 June 1992 as a means for Member States to confirm their commitment to the protection of regional or minority language. The background to the Charter is described in detail in the affidavit of Claire Salters. It appears that the overriding purpose of the Charter was cultural and that it was designed to protect and promote regional and minority languages as a threatened aspect of Europe's cultural heritage. The Charter was not intended to establish individual or collective rights for the speakers of regional or minority languages.

[17] Given the scope of the applicant's challenge based on a very specific provision of the Charter and also having regard to the very clear conclusion to which I later come in respect of this challenge I have tried to confine the analysis of the Charter within appropriate parameters.

[18] Irish was recognised by the UK Government as a regional or minority language for the purposes of the Charter at the time of ratification by it of the Charter on 27 March 2001.

[19] Article 2 which is entitled "Undertakings" provides at paragraph 1 that each party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory. Part 11 contains Article 7 paragraph 2 which provides:

> **"Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it."**

Article 2 para 2 contains a separate undertaking whereby each party undertakes to apply a minimum of 35 paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter which is entitled **"Measures to Promote the use of Regional or Minority Languages in Public Life in accordance with the undertakings entered into under Article 2,**

paragraph 2." Part III contains provisions for the *active* promotion of specific languages in public life in areas such as education (Article 8,) Judicial Authorities (Article 9) and so forth.

[20] State parties have to specify at the time of ratification the languages to which they would apply Part II and to identify which paragraphs o Part III will apply to each specified language. A minimum of 35 paragraphs must be applied to each specified language. The Irish language has been recognised by the UK Government as a regional or minority language for the purposes of both Parts II and III of the Charter.

[21] Article 9 of the Charter deals with judicial authorities. Article 9(1) contains provisions relating to the use of minority languages in connection with different forms of court proceedings. Article 9(2) contains provisions relating to the validity of certain legal documents prepared in the minority language and Article 9(3) requires certain important statutory texts to be made available in Irish. At the time of ratification neither Article 9(1) nor 9(2)was adopted by the UK in relation to the Irish language. The UK's ratification of the Charter in relation to Irish – in the context of judicial authorities – is in respect of Article 9(3) (undertaking to make available in the regional or minority language the most important statutory texts)

[22] Article 7(2) is, however, a freestanding undertaking. Within Part II of the Charter, Article 7(2) deals with the issue of the elimination of discrimination. The Explanatory Report explains the purpose of Article 7(2) as follows:

> **"The prohibition of discrimination in respect of the use of regional or minority languages constitutes a <u>minimum</u> guarantee for the speakers of such languages. For this reason,** ***the parties undertake to eliminate measures discouraging the use or jeopardising the maintenance or development of a regional or minority language.*** **(emphasis added)**
>
> **72. However, the purpose of this paragraph is not to establish complete equality of rights between languages. As is indicated by its wording, and in particular by the insertion of the word 'unjustified', it is in fact quite compatible with the spirit of the Charter that in the pursuit of policies which relate to regional or minority languages certain distinctions could be made between languages. In particular, the measures laid down by each state in favour of the use of a national or official language do not constitute discrimination against regional languages on the sole grounds that these same measures are**

> **not taken for their benefit. However, such measures must not constitute an obstacle to the maintenance or development of the regional or minority languages."**

[23] At paragraph 23 of her affidavit Claire Salters, Deputy Director, Constitutional Policy and Liaison, within the political directorate of the Northern Ireland Office states as follows on behalf of the Secretary of State:

> **"The Government considered the implications of the 1737 Act both before and following ratification. As appears from its preamble in Section 1, the 1737 Act was not, and is not, intended to discourage or endanger the maintenance of development of languages other than English. Rather, the 1737 Act (which, amongst other things, outlawed the use of Latin, French and the so called "Court-hand" in court) was designed to prevent disadvantage or injustice by protecting members of the public from the use in court of languages with which they were unfamiliar. The Government is of the view that the 1737 Act continues to have this purpose in function. Furthermore, the 1737 Act was not an impediment to ratification by the United Kingdom of the Charter. In particular the Government took the view that the Act did not fall within the prohibition in Article 7(2) of the Charter as it could not be said to be intended to discourage or endanger the maintenance or development of the Irish language and, therefore, did not preclude fulfilment of the UK's obligation under Article 7(2)."**

This contention was repeated in the respondent's skeleton argument.

[24] Mr Lavery QC on behalf of the applicant submitted that Article 7(2) was infringed because the 1737 Act was a measure "intended to discourage or endanger the maintenance or development" of the Irish language. He submitted this was the effect of the Act because it denies legitimacy to the use of Irish in all court proceedings whatsoever; that persons, such as the applicant, for whom Irish is their first language and who speak Irish in their everyday lives consider not only that the development of the language is hampered by the blanket ban on the use of Irish in court proceedings but that it also amounts to an affront to the Irish language and its speakers in keeping with what he described as the historic policy of attempting to Anglicize the Irish people and destroy their native culture which was regarded as barbaric and inferior; that this was explicit in earlier times when the Irish were described as the "mere" Irish and that remnants of this are to be found to the

present day as in the hostility of many to the Irish language; that the Act was clearly passed to further that policy and the attempt to justify such an enactment was he submitted hardly consistent with a commitment to create a multi-cultural and equal society as stipulated in the agreement; that in 1737 English was not the language spoken or understood by the whole of the vast majority of the population of Ireland or even indeed what was to become Northern Ireland; that the aim of the statute was not therefore simply to secure the orderly transaction of court business in a language understood and used by the majority. A prohibition as absolute as the one in question, supported as it is by a criminal sanction, is not Mr Lavery submitted wholly about the efficiency and good order of court business. The historical context in which the 1737 Act was enacted was important to establishing its aim. This enactment he said was formed as part of a range of restrictive, repressive or oppressive measures which varied in their intensity and enforcement but which were commonly referred to as the "penal laws".

[25] In support of these submissions Mr Lavery relied on the report obtained from the historian Dr Eamon Phoenix of Stranmillis College, Belfast who had been instructed by the applicant's solicitor to provide a commentary putting the Act into its historical context. Dr Phoenix's report dated 22 May 2008 is exhibited to Mr Flanigan's affidavit.

[26] In his report Dr Phoenix opined that for a full understanding of the import and purpose of the 1737 Act it was necessary to place it in its full historical context. Having purported to examine the relevant historical context he concluded as follows:

> **"… The 1737 Act … can be viewed as a piece of discriminatory legislation directed at the mother tongue of the mass of the Irish population at that time. It is therefore the cultural equivalent of the penal laws."**

[27] The respondent and notice party also instructed an historian, Dr McBride from King's College, London to provide a commentary upon the 1737 Act and its historical context. In particular, Dr McBride was requested to provide an opinion upon whether the 1737 Act formed part of what was referred to as the "penal laws" in Ireland. In his report dated 10 October 2008 he concluded:

> **"… I cannot find any evidence to suggest that the Act in question was ever regarded as part of the 'penal laws', that it was intended as anti-Catholic measure, or that it was intended to weaken the position of the Irish language in Ireland. This opinion is based on a reading of Dr Phoenix's report, an examination of the political, religious and**

> **legislative context of the 1730s, and a reading of the 1737 Act itself in light of other Irish (and British) legislation of the period … The obvious conclusion is that the [1737 Act], hitherto unnoticed by historians, does not belong to the history of the penal laws at all. It rather forms a minor episode in the less sensational history of legal reform in 18th century Britain and Ireland."**

[28] I express no view as to the correctness or otherwise of the widely differing analyses of the 1737 Act offered by the two distinguished historians. Such a resolution, even if possible, is not required by the legal issues exposed by this judicial review.

[29] However irrespective of what intention lay behind the 1737 Act at the time of its enactment its retention has the *effect* of maintaining in place what amounts to a de facto absolute prohibition on the use of Irish in all court proceedings. The only theoretical exception would be where an Irish only speaker who was a party to proceedings required an interpreter in the same way as any other non-English speaking party.

[30] The Charter contains monitoring provisions whereby signatory States are required to report to the Secretary General of the Council of Europe on a periodic basis regarding the policies which they have pursued and the measures they have chosen to implement. The reports of the various signatory States are examined by a body known as the Committee of Experts which in turn reports to the Committee of Ministers. In its second monitoring report in March 2007, in its comments on Article 7(2), the Committee of Experts considered the impact of the 1737 Act. In paragraph 147 and 148 of that report the Committee of Experts stated:

> **"147. With regard to Irish, the 1737 Language Act … prohibits the use of Irish in courts, although the Good Friday Agreement states that:**
>
> > **'The British Government will in particular in relation to the Irish language, where appropriate and where people so desire it, seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language.'**
>
> **148. However, although the 1737 Act is still in force, the Committee of Experts was informed that the use of Irish is in theory permitted if one does**

> **not understand English.** ***There seems to be a contradiction between the 1737 Language Act and the Good Friday Agreement regarding the use of Irish in courts. However, the departments are currently receiving legal advice on this aspect and the Committee of Experts encourages the authorities to remove the obstacles to the use of Irish indicated by the 1737 Act."*** **(emphasis added)**

The first ground of challenge

[31] In respect of the first ground of challenge grounded in the alleged breach of Article 7(2) of the Charter the respondent submitted that its provisions operate only on the plane of international law and create no rights or obligations in domestic law.

[32] The distinction between international law and domestic law has long been accepted by the courts in the United Kingdom. Where it is intended to give domestic legal effect to obligations arising from international treaties the method of achieving this is by incorporating the relevant treaty into domestic law as for example was done by the Human Rights Act 1998 in relation to the principal provisions of the European Convention on Human Rights. This has not however been done in relation to the Charter.

[33] This well established legal position reflects the constitutional principle that in the UK the Executive does not have lawmaking powers unless these are conferred upon it by Parliament. The ratification of an international treaty such as the Charter is an Executive action effected under prerogative power and involves no delegation of legislative power by the legislature. Moreover, unlike legislation, such an exercise does not require the assent of Parliament. The Crown cannot change unambiguous law by the exercise of prerogative powers. In this respect see the case of Proclamations (1611) 12 Co Rep 74 where at 75 it is stated that:

> **"The King by his proclamation or other ways cannot change any part of the common law, statute law, or customs of the realm."**

If the ratification of an international treaty had the effect of altering domestic law then the Executive would be able to supplant the legislature by making legislation without any form of Parliamentary consent or approval by the backdoor. This would clearly emasculate the constitutional principle that in the UK the Executive does not enjoy lawmaking powers unless these are bestowed upon it by Parliament. See the House of Lords decisions in Rayner v DTI [1990] 2 AC 4 118 at 499-50, Brind [1991] 1 AC 696 at 747-748 and 762B-D and R v Lyons [2003] 1 AC 976 at [13] and [27].

[34] The applicant has however submitted that the Executive action of ratifying the Charter creates a legitimate expectation that public authorities will be required to give effect to the terms of the treaty. The principal case relied upon in support of this argument is the decision of the High Court of Australia in Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273. On proper analysis this argument is an impermissible attempt to bypass the constitutional principle referred to in the preceding paragraphs.

[35] I do not accept that Teoh represents the state of law in the United Kingdom, not least of all because it would be in contravention of the clear constitutional position and also because it is inconsistent with Chundawdra [1998] Imm AR 161, Behluli [1998] Imm AR 407 and R (European Roma Right Centre) [2004] 2 WLR 147. See in particular the judgment of Simon Brown LJ at para 51 and Laws LJ at para 100 – 101.

[36] Given the constitutional position the ratification of an international treaty by the Executive cannot, in the UK, be viewed as creating a legitimate expectation that the treaty should then be enforceable directly in domestic law. In my view the position is quite the contrary. The expectation, if any, will in light of the well established constitutional position be that the treaty will **not** be enforceable in domestic law.

[37] The first permitted ground of challenge and the applicant's skeleton argument sought to deploy cannons of statutory interpretation that Parliament must be presumed to have intended to have legislated in line with the United Kingdom's international obligations. However since the terms of the 1737 Act are clear and unambiguous the cannons of interpretation relied upon by the applicant in its skeleton argument are not relevant since they only have a role when it can be said that there is room for more than one interpretation of the statute. In my view the terms of the 1737 Act are clear and unambiguous and that to alter them would require amendment not interpretation. Accordingly I accept that there is no basis for impugning the clear terms of primary legislation. This is a recognition of the fundamental constitutional principle represented by the concept of the sovereignty of Parliament (See Lord Steyn in Jackson [2005] UKHL 56 at [102].

[38] The respondent went further and submitted that the terms of the 1737 Act did not breach any provision of the Charter in particular the provisions of Article 7(2). The respondent invited the court to conclude that there had in fact been no breach.

[39] As is apparent from the discussion above the existence or otherwise of a breach of Article 7(2) of the Charter would not in the circumstances of this case be justiciable. Furthermore in light of the recent decision of the House of Lords in R (Corner House Research) v Director of the Serious Fraud Office (2008) UKHL 60 and the decision of Weatherup J in Re McCallion (No. 4)

[2009] NIQB 45 I consider that it would be inappropriate for the court itself to determine whether Article 7(2) had been breached. Insofar as the Committee of Experts (part of the compliance monitoring architecture of the Charter) have expressed any view on this matter it is to be found in their comments set out at para 30 above.

Second Ground of Challenge

[40] As to the second ground of challenge the applicant maintains that the prohibition under the 1737 Act of any language other than English in courts breaches his rights under Article 6 taken in conjunction with Article 14.

[41] It is clear that the applicant is fluent in English and able to conduct all aspects of legal proceedings in English. He has not and could not have made the case that he was in fact unable to have access to the court since it is plain that when occasional liquor licences had been sought in the past in respect of these premises they had been processed successfully with the use of English without any difficulty.

[42] Article 14 of the Convention provides:

> **"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."**

[43] However for Article 14 to be activated the applicant's case must fall within the ambit of the substantive Convention right invoked by the applicant in this case, namely Article 6. The respondent has submitted that the applicant's claim is outwith the ambit of Article 6 and that the applicant's challenge under this heading must also fail. This submission is advanced by the respondent on the basis that there is no part of Article 6 which seeks in any way to guarantee that an individual is entitled to conduct legal proceedings in the language of his or her choosing and that this is not a right guaranteed in the Convention. I accept this submission.

[44] Article 6 is about the fairness of proceedings in the determination of civil rights or obligations or a criminal charge. The right contained in Article 6 is entitled the "Right to a Fair Trial". It is incontestable that such a right might be jeopardised in circumstances where a party to the proceedings could not fully understand them if they were conducted in English without any form of translation facilities. However that is not the case before the court. As has already been observed the applicant is fluent in English and is fully competent to transact court business in English and the determination of any application for an occasional liquor licence has in the past been

determined successfully in favour of the same premises on no fewer than six occasions since January 2008 when the applications were all processed in English. As fairness is not at risk I accept the respondent's submission that Article 6 is not in play and that the necessary connection to enable the court to conclude that the applicant's Article 14 complaint is within the ambit of Article 6 cannot be found.

[45] In their written and oral submissions the respondent drew the court's attention to recent jurisprudence suggesting that the necessary connection referred to a circumstance where the complaint of discrimination by the individual relates to what could be described as the "core values" of the substantive Convention right in question. (See N v Secretary of State for Work and Pensions [2006] 2 AC 91 at paras [(4] and [14] and Regina (Clift v Secretary of State for the Home Department [2007] 1 AC 484 at paragraph [13]). As I have held that fairness is not in play it can be said that the core values of Article 6 have no connection to the complaint of discrimination being advanced by the applicant.

[46] In the light of this conclusion it is unnecessary to consider whether there was in fact any discrimination and if so whether it is justifiable.

[47] The applicant for an occasional licence must be the holder of an existing licence and the applicant in the present judicial review is not as previously pointed out such a person. Accordingly the respondent submitted that the applicant is not a victim in relation to the decision of the respondent in this case and cannot sustain an action under Section 7 of the Human Rights Act 1998.

[48] It is well established in the Strasbourg jurisprudence in respect of Article 34 of the Convention that to be victim the individual concerned must be directly affected and that the Convention organs exclude applications which amount to an actio popularis: see, for example, Klass v Germany [1978] 2 EHRR 214 at para. 33 and Norris v Ireland [1988] 13 ECHH 186 at para. 30 The respondent submitted that the applicant's claim is in the nature of an actio popularis and that the court should reject it on the basis that he is not a victim of the decision that he complains of. However in light of the conclusions which I have reached on the substantive issue it is not necessary for the court to reach a final determination on this issue.

Conclusion

[49] In light of the foregoing both grounds of challenge relied upon by the applicant are rejected and the application for judicial review is dismissed.