Neutral Citation no. (2000) 2097

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

Delivered:	22/06/00

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY
ROBERT FERRIS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

GILLEN J

The applicant, Robert Ferris, applies to this court for leave to apply for judicial review of two decisions which he alleges were made by the Ministry of Education on 26 January 2000 and 25 May 2000. In this matter, the respondent, who had been invited to attend, did so and made representations as to whether leave should not be granted.

Mr McKee, who appeared on behalf of the applicant, set out the following factual situations:

1. The applicant is the father of Victoria Ferris who started her secondary education at Strangford College Integrated School ("Strangford College") in September 1999. The applicant is separated from his wife and Victoria resides with his wife.
2. At the school the child is being taught, inter alia, Gaelic studies which is a compulsory part of the curriculum in the first year.
3. Mr Ferris objects to his child being taught Gaelic studies on a compulsory basis.

He argues that by virtue of this topic being taught compulsorily, a minority culture is being opposed on his child and she is not being afforded the opportunity to be taught other cultures such as the Protestant and Unionist culture. He argues therefore that his culture, beliefs and background are being ignored and that the compulsory teaching of Gaelic studies is only one aspect of mutuality of understanding.

4. Correspondence was exchanged between the applicant's solicitors and the principal of Strangford College on 14 January 2000 and 19 January 2000. In the latter, the principal made it clear that cross-curricular themes of education for mutual understanding and cultural heritage are requirements by the Department of Education and it is under that heading of the Education Reform (Northern Ireland) Order 1989 that this subject was delivered to the students. This is a recognised integrated college under the Education Reform (Northern Ireland) Order 1989 and the Governors support education policy for children who are Protestant, Roman Catholic and others whose parents selected the Strangford College.

5. The applicant's solicitors wrote to the Minister of Education on 14 January 2000. On 26 January 2000 Mrs J Lockery, the Private Secretary to the Minister at the Department of Education replied in the following terms to the applicant's solicitors:

> "The Minister has asked me to acknowledge receipt of your letter of 14 January on behalf of your client Robert Ferris.
>
> I should explain that, within the terms of the statutory curriculum, a language studies area of study is compulsory for pupils at secondary level. In order to meet that requirement, all pupils in grant-aided secondary schools must study at least one modern language from either French, German, Italian or Spanish. A school may also offer Irish and, if a pupil decides to study Irish, that satisfies the statutory requirement. It is however entirely

> a matter for individual schools to decide whether or not to offer Irish as one of the language choices".

It may well be that at this stage there had been an mis-understanding as to the real issue at the heart of this matter. Irrespective of this however, I do not consider that this letter amounted to a decision of any kind by the Department of Education and on this ground I refuse leave to the applicant for judicial review arising out of the letter of 26 January 2000.

6. That does not end the matter however. Further correspondence ensued between the applicant's solicitor and the Department of Education on 12 May 2000 and 25 May 2000 respectively. The issues currently before the courts were embraced in that correspondence. In particular the letter from the applicant's solicitor stated, inter alia;

> "We regard the compulsory teaching of Irish to first years at Strangford Integrated College and its net effect on our client in all the circumstances as being in breach, inter alia, of the European Convention on Human Rights and fundamental freedoms and in particular but without prejudice to the generality of the foregoing Article 2 of the First Protocol therefore. We submit that no respect has been shown with regard to the religious, philosophical, cultural and political beliefs of our client and further there is no neutrality of teaching involved in the decision whereby Irish is taught compulsorily to first years.
>
> We require you to make an unequivocal decision in writing to ourselves within 7 days from the date of this letter either affirming or overruling Strangford College's policy decision to teach Irish compulsorily and in particular to our client's daughter. …"

In their reply, the Department of Education dealt in some detail with the points raised and concluded stating:

> "The Northern Ireland curriculum also includes a number of compulsory educational themes which are not subjects in their own right but are taught through the medium of the compulsory subjects of the curriculum. While

> objectives have been set out by these themes, their content is not prescribed. Accordingly in the circumstances of this case, the Department is not prepared to affirm or overrule the school's decision about such consent."

I consider that this letter does provide the basis for an arguable case that a decision not to affirm or overrule the school's decision has been made by the Department of Education ("the Department").

7. The applicant is separated from his wife (albeit not by a court order). His wife's attitude is that she is content with the school's approach.

8. A considerable delay was occasioned in the earlier stages of this case primarily as a result of the efforts on behalf of the applicant's solicitor to obtain legal aid. I have read the affidavit of the applicant's solicitor in this regard and I consider that there is good reason for extending the period within which the application is made particularly since there is now a second decision namely that of May 2000 which is the subject of challenge.

The statutory framework within which this application is brought is as follows:

1. Article 3 of the Education Reform (Northern Ireland) Order 1989 ("the 1989 Order") imposes a duty on the Department to promote the education of the people of Northern Ireland and to secure the effective execution by boards and other bodies on which or persons on whom powers are conferred or duties imposed under the Education Orders of the Department's policy in relation to the provision of the education service. Under Article 4 it is the duty of the Board of Governors and the principals of every grant-aided school to ensure that the curriculum for the school satisfies the requirements of the Article. The Article requires that the curriculum is a balanced and broadly based one promoting the spiritual, moral, cultural, intellectual and physical development of pupils at the school. Under Article 8 of the Order the curriculum shall not be taken to satisfy the requirements of Article 4(2) unless it promotes wholly or

mainly through the teaching of the contributory subjects and religious education, the attainment of a number of objectives of a number of educational themes including education for mutual understanding and cultural heritage.

2. Under Section 24 of the Northern Ireland Act 1998 a Minister or Northern Ireland Department has no power to make any act incompatible with any rights under the European Convention on Human Rights. The Convention Rights include Article 2 of the First Protocol which states:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

3. Counsel drew my attention to the Belgian Linguistic Case (No.2) at [1979] 1 EHRR 252. The Court concluded that this Protocol does not guarantee a right to education nor does it require of states that they should in the sphere of education respect parent's linguistic preferences but only their religious and philosophical convictions. The proposed respondent in this matter argued that Gaelic studies is primarily the teaching of the Irish language and accordingly fell outside the protection of Article 2. However even if that were correct, a more difficult problem arises with the construction of the concept of "philosophical" convictions. This is a concept that can bear various meanings according to its context. The proposed respondent argues that the applicant's application is really to secure a political objective and as such is not covered by the Protocol.

In considering an application for leave to apply for judicial review two authorities govern the test that I must apply. In Re Cookstown District Counsel (Unreported 10 June 1996, Northern Ireland) Kerr J held that:

> "The requirement to raise an arguable case is a modest one. It need only be shown that the assertions made by the applicant prove to be correct, it would be tenable to claim that he may be entitled to judicial review of the

decision challenged."

Also, in Re Gary Jones (Unreported 10 July 1996, Northern Ireland) Campbell J (as he then was) said that the test for the grant of leave is whether the judge is satisfied "that there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review."

In this case I have indicated that I have invoked the inherent jurisdiction of the court expressly to refuse leave in respect of the issues arising out of the correspondence of 26 January 2000 on the basis that no decision was made. However, I consider that it is arguable that a decision was made by the Department of Education on 25 May 2000, namely that it decided that it was not prepared to affirm or overrule the school's decision in this instance. Whilst I make no comment on the weakness or strength of the claim I consider that there is a case fit for further investigation at a full inter partes hearing on the issues raised by the applicant and in particular as to whether, if there was a decision made on 26 May 2000, it engages Convention rights and infringes the provisions of Article 2 of the First Protocol.

Accordingly I grant leave to the applicant in this instance.

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JUDGMENT

OF

GILLEN J
