



THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 57
[2015 No. 561]

The President
Finlay Geoghegan J.
Irvine J.
BETWEEN

SECULAR SCHOOLS IRELAND LIMITED

APPELLANT

AND
THE MINISTER FOR EDUCATION AND SKILLS, IRELAND AND
THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of the President delivered on 2nd March 2017

Introduction

1. This is an appeal brought by Secular Schools Ireland Ltd. against the order and judgment of the High Court (Hedigan J) of 4th September 2015, refusing reliefs sought by way of judicial review of a decision to exclude the appellant from consideration for patronage of a new primary school at Carrigtwohill, County Cork. The appellant is a company limited by guarantee which aims to promote and provide secular education for children. The company applied to the Minister on 20th March 2015, to be appointed patron of the new primary school that was scheduled to commence on 1st September 2015. By letter of 10th June 2015, Ms. Jacky Hynes, Assistant Principal Officer in the Forward Planning Section of the Department, notified the appellant's representative that patronage of the school was to be awarded to another named applicant and that "your application was not successful on this occasion". The letter also said that the Minister had accepted the recommendation of the New Schools Establishment Group in making the patronage appointment, explaining that all of the relevant information in relation to the decision was available on the Department's website. Access to these materials revealed that Secular Schools' application had not actually been the subject of substantive evaluation but had been excluded at a preliminary stage because it was considered to be deficient as not containing appropriate declarations of compliance with Departmental requirements, more particularly discussed below. The appellant applied to the High Court for judicial review of the decision and consequential and ancillary relief. The matter was heard by Hedigan J. on 21st August 2015. The High Court delivered judgment on 4th September 2015, refusing the relief sought. Secular Schools appeals the order and judgment of the High Court.

2. In his judgment, Hedigan J. held that the application for judicial review was misconceived. There was no dispute between the parties as to the nature and extent of constitutional rights concerning education and the argument focused on the exercise of such rights. The Minister had to ensure that patronage of schools was awarded to those who would guarantee to meet the established criteria, which was the purpose of s. 10(2)(f) of the Education Act 1998. The Minister did just that by providing a mode of application that included seven criteria that an applicant had to meet. It was not suggested that any of them was unreasonable or unfair and, indeed, they appeared to be eminently sensible and practical. The applicant, Secular Schools Ireland Ltd., was made fully aware of the need to commit to those criteria. The judge said that it was "somewhat puzzling that the applicant has not even to date done so". The officials in the Department were not required to go back to applicants who had not made valid applications. Secular Schools had simply failed to meet the requirements notwithstanding that they had been made fully aware of them. The appellant had been the author of its own misfortune.

3. The appellant's notice of appeal is couched in traditional judicial review terms which will be considered in due course. The written submissions also include more erudite argument about parental rights in constitutional law and in international obligations that the State has undertaken, some of which have not been implemented in national law. It is, however, unnecessary to embark on an exploration of these issues. The Minister submits that Secular Schools did not make a valid application, notwithstanding that it was notified of the necessary terms and conditions on a number of occasions:

"The issue is respectfully considered by the Respondent to be simply whether or not the Applicant/Appellant failed to follow the published requirements for the terms of its application, and not the matter of statutory interpretation or constitutional rights of the Applicant/Appellant or others raised in these proceedings."

4. I agree with the Minister's position. The central issue in the appeal is indeed whether the application made by Secular Schools was valid, in the sense of being in accordance with the terms and conditions and information provided by the Department to intending applicants including the appellant. Other possible questions fall away in light of the decision on this point and of the position properly adopted by the respondent in regard to availability of judicial review in the particular circumstances of the case. The decision of this Court in respect of validity of the application disposes of the appeal accordingly. The appellant, Secular Schools, does not seek to have the patronage appointment made in respect of the Carrigtwohill school set aside, but rather claims declaratory relief to establish the allegedly erroneous decision by the Department to exclude in limine its application from consideration.

The Relevant Facts

5. On 5th February 2015, the Minister for Education and Skills made an announcement that seven new primary schools were to be established over the next two years. The press release containing the announcement quoted the Minister as follows:

"The establishment of new schools provides an opportunity for patrons to apply to run the schools. The criteria to be used in deciding on patronage of the new schools place a particular emphasis on parental demand for plurality and diversity of patronage. Parental preferences should be at the centre of considerations about the type of school to be recognised. The patronage arrangements in place provide that patron bodies proposing schools at either primary or second level will be asked to provide evidence of demand."

6. On 17th February 2015, the Department responded to a request for information sent on behalf of Secular Schools with a copy invitation to patrons to apply to operate the new school at Carrigtwohill, County Cork together with Guidelines that would apply in determining the application. The email also sent a link to the Guidelines on the Department's website. The Guidelines document is crucial to the decision on the appeal and it is accordingly reproduced in full hereunder. Before citing that document, reference must

also be made to the invitation for applications for patronage of two primary schools including Carrigtwohill which were to open in September 2015. The letter dated 12th February 2015, said that there would be a meeting in the Tullamore office of the Department on Tuesday 24th February 2015, "for patrons/prospective patrons to discuss the areas where the new schools are required and to discuss the criteria and procedures for deciding on the patronage of these new schools". The letter gave the deadline for applications. The penultimate paragraph said [emphasis as in original]:

"Please find attached for your information a copy of the criteria and revised arrangements which will be applicable in deciding on patronage of the new schools. In making your application you must confirm that you will comply with the criteria as outlined, and you must provide evidence of parental demand from the area to be served, for the school type proposed by you. A template for submission of parental demand will be emailed to you for this purpose, and all information must be presented in this format only."

The Guidelines Document

7. "New Arrangements for Patronage of New Schools

Primary

"The following key elements will apply to the establishment of a new primary school:

- The demographics of the area must support the need for the establishment of a new school (or where meeting the demographics through the extension of existing schools would leave an unmet demand for diversity of patronage);
- If the demographics require the establishment of a school, then the process for the selection of the type of school should allow for different patrons/bodies to be considered as the patron of a new school.

Most new schools must have the capacity to accept at least one full class group of pupils at junior infant level and to increase capacity up to three full streams as needed subject to demographics and parental demand in the area.

The following requirements will have to be satisfied by prospective school patrons:

- Confirmation that the prospective patron is willing to accept and open special education facilities;
- Confirmation that the prospective patron is willing to have up to three streams subject to demand for the school;
- Confirmation that the prospective patron is willing to enter into the standard lease agreement with the Department of Education and Skills. Otherwise the prospective patron could provide their own school site;
- Confirmation of willingness to operate by the rules and regulations laid down in various Department of Education and Skills circulars and operating procedures and to follow the prescribed curriculum;
- Confirmation of willingness to operate the school within the resourcing and policy parameters established by the Department of Education and Skills;
- Confirmation of willingness to be part of a campus development with other primary or second-level schools as identified by the Department;
- Confirmation of willingness to enrol children in the area for whom the Department has identified the need for a school.

The criteria to be considered in deciding on patronage are the following:

- The development already achieved by recently established schools of a particular patronage in the identified area and the potential for future growth of these schools;
- The extent or range of diversity of patronage offered across existing schools in the identified area, having regard to the views of parents;
- The proximity of schools of similar ethos to those proposed by the applicant patrons;
- How the proposed schools under the respective patrons would provide for extending or strengthening diversity of provision in each area, having regard to the views of parents;
- Parental demand for the school that a patron is willing to establish;
- The extent to which schools of similar patronage in the area have already expanded to at least three streams (subject to space on an existing site etc);
- In an area to be served by a single school, the extent to which the needs of all pupils in the area can be met by the school.

The process will involve the following steps at primary level:

- The Department will proactively identify the areas where significant additional school accommodation is required.

- Identification of locations of new schools and sizes of new schools by the Department
- In concluding as to whether a demographic need might be met through extension projects in local schools, the Department should not seek to extend accommodation in existing schools of a certain patronage, where there is a certain level of demand for patronage of a different type in that area.
- written applications from prospective patrons addressing all of the criteria
- consideration of the applications by Department officials and report drafted for consideration by the New Schools Establishment Group
- consideration by Group of report and endorsement by Group or identification of need for further analysis by Department and subsequent consideration by Group
- report from the Group submitted to the Minister for consideration
- decision by the Minister

Parental Preferences

Patron bodies proposing schools will be asked to provide evidence of parental demand. Patrons will be asked to sign up lists of parents who indicate interest in having their children educated in their new school. These lists are to be broken down by the age of the children, including year of proposed entry to school, and by where they are living, having regard for the area to be served by the school. A template for submission of parental demand will be provided for this purpose, and all information must be presented in this format only.

Department of Education and Skills

February 2015"

8. The minutes of the meeting at the Department's offices in Tullamore record the provision of information to the applicants, including the representative of Secular Schools Ms. de Burgh. Officials described the overall process and gave information about the new schools, including catchment areas and how the information about parental preference was to be presented. They referred to the ministerial announcement in 2012 "and criteria – talked through criteria – subject to demographics and parental demand, patronage requirements etc". Another part of the note records that attendees were referred to the Department's website "for all relevant information and examples of assessment reports from previous patronage determination processes to show how the assessment of applications is carried out" and prospective patrons were advised that applications should include a statement of their education philosophy. Officials explained that it was necessary to comply with the Guidelines with which the applicants were provided once again.

9. An exchange of emails on 16th March 2015 was, first, a request from Ms de Burgh for directions to the location of the reports which had been referred to at the Tullamore meeting, "as to how previous decisions for patronage were taken, explaining in particular how the numbers of children pre-enrolled were interpreted by the department". The reply from Ms. Flynn provided links to all the reports for new primary schools in 2014. The format of those reports is similar to the report of the decision in this case.

10. Secular Schools submitted its application for patronage of the Carrigtwohill school by email dated 20th March 2015. The application contained the names and details of 98 children whose parents wished for such a school. There was information as to incorporation of the company, its proposed memorandum and articles, the names of directors and the intention to apply for charity status. Enclosed also was their Charter and a document with their characteristic spirit and a copy of an Ethics Programme in use in New South Wales. Ms de Burgh stated that if she could be of any further assistance, the Department was to contact her. She subsequently sent another email adding information on the question of diversity.

The Decision in Dispute

11. The decision at issue in the case is contained in a document of the Department of Education and Skills reporting on the applications for patronage, which is dated May 2015, and headed as follows: –

"New Primary Schools 2015

Patronage Assessment Report to the New Schools Establishment Group

Assessment report for: Carrigtwohill– Attachment no.1 to Report

Forward Planning Section"

The report gives details of the school area to be served and brief information about the applicants. It then proceeds to assessment of the applications. Question 1 is headed 'Requirements' under which the report poses the question:

"Has the applicant Patron (s) confirmed that they will comply with the requirements as set out: (comment if necessary in regard to any requirement)"

- Is willing to accept and open special education facilities
- Is willing to have up to three streams subject to demand for the school
- Is willing to enter into the standard lease agreement with DES (or otherwise provide their own site)
- Is willing to operate by the rules and regulations laid down by various DES circulars and operation procedures and to follow the prescribed curriculum
- Is willing to operate the school within the resource thing and policy parameters established by the DES

- Is willing to be part of a campus development with other primary or second level schools as identified by the Department
- Is willing to enrol children in the area for whom the Department has identified the need for a school."

The four applicants are then listed in turn and in respect of each of the others, besides Secular Schools, it is stated that the applicant has confirmed that he or it will meet all the requirements set out above. In regard to the appellant the following is stated:

"Secular Schools Ireland – the applicant has only confirmed its willingness to meet one of the requirements outlined above specifically, that it is willing to enrol children in the area for whom the Department has identified the need for a school.

A commitment to all of the requirements outlined is mandatory before an award of patronage can be considered for a State funded school. As this applicant has not given those commitments, the application has been deemed invalid and has not been processed further."

It is not easy to understand how the assessment was able to find in the application the specific confirmation of one requirement, which may have been thought to imply a deliberate choice to withhold other commitments. However that may be, it is not necessary to explore the matter further. The fact is that the reason why the Secular Schools application did not make it to the evaluation process is plainly stated.

12. In May 2015, an assessment report for the proposed school in Carrigtwohill was prepared in which it is noted that the appellant had failed to make the necessary declarations as to the requirements. On 10th June 2015, the Department informed Secular Schools that they had not been successful in their application, but it did not reveal at that point that the application was not actually evaluated on its merits. The appellant discovered that later when it examined the Department's website. Nothing turns on that, but it is not calculated to inspire confidence in the process and the decision, especially on the part of a disappointed applicant.

The Appeal

13. Secular Schools, the appellant, seeks a more modest relief than was asked of the High Court. If successful, they seek a declaration that the decision dismissing the application *in limine* was unlawful. It is difficult to identify what other remedies might be available now that the appellant is not claiming to unseat the successful patron. However, Counsel for the Minister acknowledged that there was point in the appeal; the Minister did not make the case that Secular Schools would gain nothing if they were to succeed. In my view, this was a proper concession in the circumstances.

14. Much time and space in the appellant's submission are devoted to the constitutional and international law rights regarding education and religious freedom. Indeed, half of their submissions rest on this framework. It is recognised that many of the cited conventions, while ratified, have not been transposed into domestic law. Secular Schools, in their submissions, implicitly ask the Court to embark on a broader constitutional question than is required to resolve the present case. The nexus appears to be *Meadows v. Minister for Justice Equality and Law Reform* [2010] 2 I.R. 701, which noted there is a "constitutional limitation of jurisdiction in all decision making affecting rights and duties". The East Donegal principles are also cited in this regard. The appellants argue that the constitutional right to parental choice in education found in Article 42.3.1 of the constitution must be read holistically with the State's duty to "provide for free primary education" under Article 42.4 and the religious freedom provisions of Article 44. It is suggested that vindicating the rights of certain parents requires the State to provide funded non-denominational schools.

15. Turning to the more salient administrative law points, the appellants argue that there was no basis for the dismissal of their application *in limine* as they confirmed their tacit consent to the requirements which were listed. The act of applying was itself enough to demonstrate their willingness to comply with any and all conditions required of them as they would not have applied otherwise. Section 8(6) of the Education Act outlines the duties of patrons and the appellants made their application knowing that they would have to fulfil those duties. They also point to their Memorandum of Association which mandated them to "execute all the functions of patron or trustees of national schools" which would include those mentioned in the Act. An explicit declaration of same was not necessary, at least at the time of application. They accept that further commitment was required once the patronage had been granted, but not before. The appellants should have been contacted if there was a deficiency in their application. Indeed, their grounding affidavit, at paragraph 17, suggests that an undertaking of this kind was made by the Department, which adds to perceived unfairness in the process and works against potential new patrons or those seeking non-denominational education.

16. By contrast with those of the appellant, the written submissions of the respondents are simple. They submit that the application is an abuse of judicial review proceedings and that the Court is being asked to enter the realm of policy-making contrary to principles laid down in authorities such as *O'Reilly v. Limerick Corporation* [1989] ILRM 181 and *TD v. Minister for Education & Ors* [2001] 4 IR 259. They contend that the appellants failed to abide by the terms of the application process and effectively invalidated themselves. Thus, they argue, no wrong has been done to them which the Court has power to remedy. Counsel argues on behalf of the Minister that it was obvious and clear what the application had to contain in order to be valid.

17. In her replying affidavit sworn on 6th August 2015, Ms. Jacky Hynes of the Department averred that the Secular Schools application

"... failed to contain the necessary commitments and the Department deemed it invalid. The New Schools Establishment Group, which is an independent body which oversees the patronage determination process, agreed with the Department's view in relation to the invalidity of the application."

She said that "the requirements necessary to be considered for patronage of new schools were made known to the applicant, Secular Schools Ireland, on three separate occasions". The first was on 17th February 2015, by email; the second on 24th February 2015, at the meeting in Tullamore; and the third on 16th March 2015, by email. In addition, Secular Schools had access to full details on the Department's website, including links to Assessment Reports from the previous patronage determination process. We have to look at these notifications to see if they contain the relevant information as claimed by the respondent. In an important, if not crucial averment revealing Departmental understanding of the documents, Ms. Hynes deposed that appointments of patrons:

"... are made administratively based on published criteria which contain mandatory commitments that patrons and prospective patrons must sign up to in their applications for patronage of new schools." [Emphasis added]

The requirements were set out in the Guidelines document entitled 'New Arrangements for Patronage of New Schools'.

The Law

18. The standards that have to be applied are not in dispute and are fundamental precepts of administrative law. They include rationality, notice, fairness and reasonableness. There must be rules that are rationally related to the purpose of the process; persons affected have to be given notice of the rules; they must be fairly applied and the process has to be managed reasonably. These are not new. They stem originally from the common law and are in this jurisdiction now located in the Constitution, see *East Donegal Co-Op v Ireland & AG*. The issue is whether the Department acted reasonably in excluding the application made by Secular Schools.

Discussion

19. The Guidelines, which are set out in full above, require some detailed consideration. The first section deals with Primary schools. The relevant provisions for this appeal appear in two paragraphs on pages 1 and 2. The document says: "[t]he following requirements will have to be satisfied by prospective school patrons" under which are listed the seven points that appear above in the section on 'The Relevant Decision' as questions. In this document, each commitment commences with the word "Confirmation". The next paragraph opens with the words: "The criteria to be considered in deciding on patronage are the following" after which another seven bullet points appear. They include the development already achieved by recently established schools of a particular patronage in the area and the potential for growth of those schools; the extent of diversity of patronage in the area having regard to the views of parents and the proximity of schools of similar ethos. These relate to matters of supply and demand for diverse education needs and desires. The final paragraph concerning primary schools deals with the process of supply of new schools and choice of patrons, specifying the respective roles of the Department; the New Schools Establishment Group; the Minister and envisaging "written applications from prospective patrons addressing all of the criteria". Following the section dealing with second level schools, there is a paragraph stating that proposed patrons will be asked to provide evidence of parental demand.

20. As Ms. Hynes explains in her replying affidavit, the genesis of this document is in a report commissioned by the Minister and published in April 2011. The Commission on School Accommodation recommended that conditions in the terms of six of the seven requirements now specified should be met by prospective patrons in making applications. The Minister added a further condition which is the last of the requirements. The advisory body also recommended the criteria to be applied in deciding on patronage and they are as appear above. Ms. Hynes says that this is why these conditions and criteria appear in the document.

21. Ms. Hynes says (at para. 30 of the replying affidavit), that "the requirements necessary to be considered for patronage of new schools were made known to the applicant, Secular Schools Ireland, on three separate occasions". The first was on 17th February 2015, by email; the second on 24th February 2015, at a meeting in Tullamore and the third on 16th March 2015, by email. In addition, Secular Schools had access to full details on the Department's website, including links to Assessment Reports from the previous patronage determination process. In regard to 17th February 2015, there was an exchange of messages culminating on 17th February 2015, and the Guidelines document discussed was attached to the email sent to Mr. Breen of Secular Schools. That communication requires no further discussion. The meeting in Tullamore on 24th February 2015 with prospective applicants was attended by Department officials including Ms. Hynes and by Ms. Lefre de Burgh of Secular Schools. The attendees were again provided with the Guidelines. Ms. Hynes avers that the prospective patrons were told that it was necessary to comply with them and that "the requirements and criteria for a patronage application and choice of candidate were all fully described". The minutes of the meeting record, inter alia, that attendees "were also referred to the Department's website for all relevant information and examples of assessment reports from previous patronage determination processes to show her the assessment of applications is carried out". Prospective patrons were also advised that applications should include a statement of their education philosophy. Turning to the email of 16th March 2015, to which Ms. Hynes thirdly refers, this is a reply to a query from Ms. De Burgh about the reports on the website as to how previous decisions on patronage were taken. She said in her message to the Department that it was mentioned at the meeting in Tullamore that there were such reports available but she said she could not find them. She specifically referred to "how previous decisions for patronage were taken, explaining in particular how the numbers of children pre-enrolled were interpreted by the Department". Ms. Flynn of the Department responded with links to all the available reports. The form and style of each of the reports is the same as the one in this case. After a first introductory page with general information about the school area and the applicant, as noticed elsewhere in this judgment in relation to the relevant decision, there is an assessment beginning with "1. Requirements", which sets out the query as to the seven commitments. This is the most telling documentary material in favour of the Department's position.

22. It seems to me that the crucial document is the one described as 'Guidelines'. It seems clear from the affidavits and the submissions that there is actually no dispute about that. Ms. Hynes confirms that applicants were given the Guidelines on two occasions and they were referred to at other times. The Department's case, based on its understanding of the Guidelines is, to repeat Ms. Hynes's deposition quoted more fully above, that the Guidelines "contain mandatory commitments that patrons and prospective patrons must sign up to in their applications for patronage of new schools". [Emphasis added] However, I do not agree that this document says what Ms. Hynes says it says. It is a misreading to say that the document publishes criteria which contain mandatory commitments that prospective patrons must sign up to in their applications.

23. The Guidelines document contains a list of requirements by way of commitment to seven bullet point statements. It also contains a list of criteria which are to be employed by the Department and the advisory group and the Minister in appointing patrons. The criteria do not, however, contain compliance with the requirements by declarations of commitment. They are separate. In addition to the conceptual chasm between a requirement and a criterion, there is the fact that they apply to different functions in the process. Nowhere in the document does it state that the commitments must be expressed in the application. On the contrary, the steps in the process at primary level set out in the Guidelines include "written applications from prospective patrons addressing all of the criteria". [Emphasis added]. This is the essence of the appellant's complaint and it is correct in my judgment. It would appear that the Department somehow became convinced that their documents and other communications said what Ms. Hynes understood this notice to say. It may be that officials believed that they had implemented in the Guidelines an analogous recommendation in the 2011 Report, but however it came about, in my view, the Department's understanding of its own document was erroneous. The result was that Secular Schools suffered an injustice in being excluded from the application process.

24. A troubling point against the appellant is that the reports of previous decisions reveal that the assessment in each case included a statement as to the acceptance by the applicant of the specific requirements. The reports do not say that the applicant in each case has confirmed its commitment in the application document that it submitted. Nevertheless, I think it reasonable to infer from these reports that the applications do contain acceptance of the requirements, but I do not think that the meaning is beyond argument. This is particularly the case when there was not any prescribed application form so the manner of presentation by the prospective patron was a matter of individual choice. It seems to me that the correspondence and reports must be seen in their context. Although I think that a careful reading would arguably alert a potential applicant to the consideration by the Department of the applicant's commitment to the specified requirements, Ms. De Burgh was as she stated in her email interested in the method whereby the Department evaluated the numbers of pre-enrolled children. Since that was her expressed intention, it is understandable in the circumstances that she would have focused on the evaluations and the reports relating to her specific area of interest. What is also lacking in the information provided to applicants was any declaration that failure to specify acceptance in the application would be fatal.

24. It is relevant that the Department did not supply an application form for potential patrons.

25. I do not think that it is fair or reasonable to fix Ms. De Burgh and her organisation with knowledge of a pre-condition for validity of an application on the basis of the contents of the evaluation reports in previous years and other cases. This was the first such application by Secular Schools. While I accept that the listing of these obligations early and prominently in the sample reports is significant, I think it is the only thing to which the Department can point that might establish that Secular Schools ought to have known about these specifications. As against that, it is the Guidelines that were notified as the source of relevant information as to applications for patronage. In my judgment, the Guidelines do not contain the specific demands that the Department suggests in written and oral argument.

25. It is unnecessary to consider any larger questions that were raised by the appellant in written submissions. Neither does the Court have to decide whether it was incumbent, or even permissible for the Department, in the circumstances of the application, to revert to Secular Schools for reassurance or confirmation as to its commitments, however surprising it may appear that an applicant for appointment as patron would be unwilling to accept the conditions that went with the position. To say the least, it would perhaps have seemed puzzling why the applicant would be considered by its application implicitly to express agreement with one requirement but refuse it for the others.

26. This was a case of confused thinking based on a misleading choice of words which the Department proceeded to misunderstand. The Department should have said what the application had to contain by way of explicit declaration on the part of the applicant. My conclusion is that the Department was in error in considering that the application submitted by Secular Schools was invalid. In my judgment, the Department made a serious error of administration in rejecting the application on the basis of invalidity and wrongly excluded the applicant from the choice of school patron evaluation process. Contrary to the submissions and argument made on behalf of the Minister, it was not made clear to Secular Schools that they had to express commitment to a list of stipulations in their application for patronage of the school.

27. Accordingly, I would allow the appeal and grant a declaration that the application made by Secular Schools on 20th March 2015 to act as patron of the primary school at Carrigtwohill was not invalid. This declaration is being granted in circumstances in which the appellant Secular Schools has confirmed to the Court that it does not seek to have the patronage appointment made in respect of the Carrigtwohill School set aside. As such, it is obviously of little practical benefit to Secular Schools in relation to the impacting the events that have already occurred in any overt way, but the case raised a significant issue of public administration and it is of real importance for the applicant that its position is vindicated.