

**THE HIGH COURT  
JUDICIAL REVIEW**

[2003 No. 442 J.R.]

**BETWEEN****NEIL MCVEIGH****APPLICANT****AND****THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM****RESPONDENT****Judgment of Mr. Justice Roderick Murphy dated the 17th day of December, 2004.****1. Outline**

The applicant sought an order quashing the Minister's refusal to grant him an occasional import licence for a Westley Richards double-barrel .47 firearm. Leave to appeal had been granted by Peart J. on 23rd June, 2003. The matter came for hearing before this Court on 12th October, 2004.

The application for the licence had been made two years beforehand on 16th October, 2002, under the Firearms Acts, 1925 as amended for that and another firearm.

The applicant's grounding affidavit exhibited the relevant correspondence.

By letter, dated 24th October, 2002, the application was refused. That letter stated:-

"... please note that prior consent for the importation of a Westley Richards Double-Barrelled .470 calibre rifle ... has NOT been granted. It is current policy to grant firearms certificates for only shotguns, crossbows, unrifled air guns and rifles up to .22 inches (5.6 mm.) except in the case of deer hunting and competitive target shooting when bolt-action rifles up to .270 inches (6.8 mm. approx.) are authorised. Pistols, air pistols, revolvers, hand guns and stun guns are totally prohibited."

The policy referred to the grant of a *certificate* which was within the discretion of the relevant superintendent of the gardaí. An *import licence* was granted by the Minister in respect of a bolt-action rifle with a calibre of .243. The licence was issued subject to the condition that the applicant would not arrange to import the firearm until he had applied at his local garda station for a firearms certificate which was a matter for the local superintendent.

By letter dated 3rd January, 2003 the applicant's solicitors referred to s. 17(4) of the Firearms Act, 1925, as amended. There is no requirement in that provision for a registered firearms dealer to hold a certificate in respect of the firearm in respect of which an occasional licence was sought. It was submitted that the basis upon which the application was refused was not a valid reason under the legislation. The policy in relation to the granting of a firearms certificate was not a valid consideration. The failure on the part of the respondent to issue an occasional importation licence to the applicant in the ordinary course of his business as a registered firearms dealer constituted a restraint on his capacity to trade as such, both within this jurisdiction and within the European Union. That letter concluded that the legitimacy or otherwise of the "current policy" as the ground for refusal had no relevance to the application.

On 17th January, 2003 the respondent replied:

"Firearms certificates and importation licences may only be granted in respect of those firearms which come within the current policy for granting such certificates and licenses.

It is current policy to grant firearms certificates and Importation Licences only for shotguns, crossbows, unrifled air guns and rifles up to .22 inches (5.6 mm) except in the case of deer hunting and competitive target shooting when bolt-action rifles up to .270 inches (6.8 mm approx.) may be authorised. Pistols, air pistols, revolvers, hand guns and stun guns are totally prohibited.

As the firearm which Mr. McVeigh wishes to import does not come within these categories, his application is refused."

The applicant relies on this letter of 17th January, 2003 for the purpose of the present application for judicial review. It refers to "current policy for granting such certificates and licences" leave to bring an application for judicial review was granted with six months of this letter on 23rd June, 2003.

In a further letter from the applicant's solicitors, dated 28th January, 2003, it was submitted that it was legitimate for the applicant, as a firearms dealer, to possess a .470 calibre rifle for the purpose of sale either in the State or for export abroad. There was no provision in the Firearms Acts which removed the discretion vested in individual superintendents as to whether to issue a certificate or not in respect of the firearm in question. It remained possible that such a firearm would be certified in appropriate circumstances. Similarly, it remained possible for the Minister to authorise the use of such firearms in the State in respect of persons holding European Firearms Passes. The Minister was requested to respond, setting out the statutory basis for the refusal to grant the import licence and for refusing to grant certificates. A similar letter was sent to the Minister for Defence.

The respondent Minister replied on 6th February, 2003 as follows:

"I wish to confirm that in accordance with the provisions of the Firearms Acts, 1925-2000, a firearms dealer is not required to hold firearms certificates in respect of the firearms in which he is trading. As already stated in previous correspondence, current policy in regard to the licensing of firearms allows for only certain categories of firearms to be licensed. Therefore it follows that a firearms dealer may only trade in those firearms as defined by policy. The policy is not set out on a statutory basis.

As regards the refusal of the importation licence, your attention is drawn to the provisions of s. 17(4) of the Firearms Act, 1925, which provides, *inter alia*, that 'an occasional importation licence ... may be ... granted by the Minister' which confers a discretionary power on the Minister."

This letter referred to "current policy in regard to licensing".

The letter continued to deal with the European Firearms Pass which is not relevant to the present application.

The letter finally referred to s. 17(2) of the Firearms Act, 1925 in relation to the grant of an occasional licence to import a prohibited weapon being granted by the Minister for Defence which was revoked by s. 28(1) of the Firearms Act, 1964.

The applicant exhibited the certificate of renewal of registration of a firearms dealer for the relevant period 28th November, 2002 to 27th November, 2003 in his affidavit grounding the application. There is no indication as to conditions, if any, in respect of which the original registration or licence was subject.

## **2. Relief Sought**

The applicant, on 23rd June, 2003, was granted leave to apply by way of application for judicial review for the following relief:-

- (1) An Order of *certiorari* quashing the decision of the respondent to refuse to grant an occasional import licence which said decision was first communicated by letter dated 24th October, 2002, and confirmed by letters dated 17th January, 2003, and 6th February, 2003;
- (2) A declaration by way of application for judicial review that the decision to refuse to grant an occasional import licence to a registered firearms dealer on the basis of a stated current policy [was] *ultra vires* the provisions of the Firearms Acts, 1925 in that it constituted a fettering of a discretion under the Acts and/or failed to have regard to the fact that as a firearms dealer the applicant was not required to possess a firearms [certificate] pursuant to s. 2(c) of the Firearms Act, 1925;
- (3) A declaration by way of an application for judicial review that the respondent acted *ultra vires* his statutory powers in determining as a matter of policy that a firearms certificate would not issue in respect of specified classes of firearms and/or in further deciding that occasional import licence would not issue in respect of the said class of firearms;
- (4) A declaration by way of application for judicial review that the discretion to grant firearms certificates vested in the garda superintendent for the area in which an applicant for a certificate resided and not in the respondent;
- (5) An order extending the time within which an application for judicial review might be brought (if necessary);
- (6) Damages for interference with ability to trade;

It was further ordered that the applicant had leave to amend the statement of grounds which amendment was incorporated into the leave granted.

## **3. The respondent's case**

### **3.1 Statement of Opposition September, 2003.**

The respondent opposed the application for judicial review on the following grounds:-

- (a) the applicant was not entitled to an order for *certiorari* of the impugned decision on the grounds claimed or on any other ground;
- (b) the discretion of the court should not be exercised in favour of the grant of an order of *certiorari*;
- (c) the application for judicial review was made outside the time permitted by the Rules of the Superior Courts, 1986 and there was no good reason for extending that period;
- (d) the decision to refuse to grant an occasional import licence and the policy on which the decision was based were not *ultra vires* the provisions of the Firearms Act, 1925;
- (e) the respondent did not act *ultra vires* his statutory powers as alleged or at all;
- (f) the applicant was not entitled to damages on the grounds claimed or on any other grounds and had not suffered any loss.

### **3.2 Replying Affidavit**

The evidence on affidavit of Declan Kelly, Executive Officer in the Firearms and Explosives Unit of the respondent's department stated that in formulating and applying the general policy, the Minister had sought to balance the lethal nature of firearms and their potential for use in connection with criminal activities (including terrorism) or their potential for other misuse, with the fact that they may be legitimately used in sporting activities. He said that the Minister had taken into account the fact that by restricting the calibre of rifles which may be imported, it becomes more difficult for criminals or terrorists to acquire heavy calibre rifles. He says that the Minister is mindful of incidents of multiple deaths and injuries involving firearms, (in some case legally held) and instances cases of indiscriminate killing.

Mr. Kelly averred that the general policy was not inflexible or indiscriminate but could be adjusted to take account of changing circumstances. He said that in 1993 the government responded positively to the views of the gardaí and shooting interests by authorising an increase in the calibre of firearms which might be licensed for deer culling and hunting and competitive target shooting from .22 inch to .27 inch. He further said that the department is currently reviewing the firearms licensing policy in consultation with the gardaí and shooting interests with a view to putting recommendations to the Minister.

## **4. Damages**

The issue of damages and loss was not, in fact pursued before this Court. The applicant did not move for an order extending the time within which the application for judicial review was brought and it was accepted by the respondent that the decision of 17th January, 2003, as confirmed by the letter of 6th February, 2003, which acknowledged the applicant as a firearms dealer and gave reasons for the refusal were the relevant statements of refusal.

## 5. The Firearms Acts, 1925-2000.

21. A firearm is defined in s. 4(1) of the 1990 Act as, *inter alia*, a lethal firearm or other lethal weapon of any description from which any shot, bullet or other missile can be discharged.

It is accepted that there is no restriction in terms of the type of firearm contained in the definition.

It is only in respect of penalties that there is a distinction between a sporting firearm and other firearms (Subsection (2A) as inserted by s. 3 of the Firearms Act, 1971). The former is defined as a firearm (other than a firearm of a kind declared by an order under this sub-section for the time being in force to be especially dangerous) which is a shotgun having a barrel of not less than 24 inches in length or an unrifled air gun or a rifled firearm of a calibre not exceeding .22 inches (Subsection (2B) as inserted by s. 3 of the Firearms Act, 1971).

Though not directly relevant it is noted that the Minister may by order declare a firearm of a kind specified in the order to be especially dangerous and may by order amend or revoke an order under this sub-section (s. 2 of the Firearms Act, 1925 as inserted by s. 3 of the Firearms Act, 1971). Moreover, that section has no application to the possession, use, or carriage of a firearm or ammunition by a registered firearms dealer in the ordinary course of his business as such dealer (sub-s. 3(c)).

The register of firearms dealers is dealt with by s. 9 of the Firearms Act, 1925 sub-ss. 8 and 9, as inserted by s. 6 of the Firearms Act, 1971 and states:-

"(8) Registration (including registration and pursuant of renewal of a previous registration) of a person in the register of firearms dealers may, at the discretion of the Minister, be made subject to the condition that the person shall not deal in firearms or deal in ammunition otherwise than by sale and purchase of ammunition for shotguns, for unrifled air guns and for rifled firearms of a calibre not exceeding .22 inches, and a person whose registration in the register of firearms dealers is made subject to the condition aforesaid and who fails to comply with it shall, notwithstanding anything contained in s. 10(1) of this Act, be guilty of an offence under the Act.

(9) In any proceedings for a certificate under the seal of the Minister stating that the registration of a person in the register of firearms dealers was subject, on a specified day or during a specified period to the condition referred to in sub-s. (8) of this section shall be evidence of that fact unless the contrary is proved."

The Act provides for restrictions on sale of firearms, *inter alia*, as follows:-

"10(2) It shall not be lawful for (any person) to sell to any person (other than a registered firearms dealer or a person officially authorised) any firearm or ammunition, unless at the time of such sale the person to whom such firearm or ammunition is sold -

(a) produces a firearm certificate authorising him to purchase or hire (as the case may be) such firearm."

In relation to the import of firearms s. 17 provides that no person shall import any firearm, ammunition, or prohibited weapon unless such import is authorised by continuing licence granted under the section and in force at the time, or by an occasional licence granted under the section and relating to the specific firearm, ammunition or prohibited weapon so imported.

Sub-section 3 provides:-

"A continuing licence to import firearms or ammunition may on application in the prescribed manner be granted by the Minister if he thinks fit so to do to any registered firearms dealer, and every such continuing licence shall operate and be expressed to authorise the importation into [the State] of firearms and ammunition generally or of any specified class or classes of firearms and ammunition through the port by the registered dealer, during the period [...] and subject to the conditions named in such licence."

Sub-section 4 provides:-

"An occasional licence to import into [the State] a firearm, with or without ammunition therefor, may, on the application in the prescribed manner by granted by the Minister to any person who holds or could be granted a firearms certificate for the firearm and ammunition (if any) in respect of which the occasional licence is sought or is a registered firearms dealer and every such occasional licence shall operate and be expressed to authorise the importation into [the State] of the firearm and the quantity of ammunition (if any) specified in such licence through the port, by the person, within the time and subject to the conditions named in such licence."

## 6. Submissions on behalf of the applicant

The applicant's case is that the refusal by the Minister of a request for an occasional import licence by the Minister was made on the basis of current policy with regard to the issue of certificates for firearms by the garda superintendent an antecedent matter involving a different statutory decision making bodies. It was a crossing of domestic to import policy. There was no statutory basis for the Minister's policy.

Moreover, the applicant was a person who was licensed to trade in firearms and therefore was not a person who was required to hold a firearms certificate in respect of firearms in his possession in the course of his trade.

In implementing a fixed policy with regard to the grant of such an import licence the Minister had, in the applicant's submission, fettered his discretion under the statutory scheme in an unlawful and impermissible manner.

The Firearms Act, 1925 (as amended) does not prescribe a category of firearms in respect of which a certificate should not issue. The policy being operated by individual superintendents had been subject to legal challenge and had been quashed in several different sets of proceedings. The applicant is specifically exempted by s. 2 of the Firearms Act, 1925 from the requirement to hold a firearms certificate as he is a registered firearms dealer as defined in s. 9 and has to comply with the requirements of s. 10 of the Act of 1925. The statutory regime which rises for specific consideration regarding the statutory discretion to grant an occasional import licence is s. 17(2) of the Act.

It was submitted that the section does not relate to the statutory discretion vested in garda superintendents to grant a certificate.

Moreover, there is no basis in the statutory provision for a policy to refuse to grant an importation licence in respect of a firearm in excess of .22 calibre.

It was also submitted that where the Oireachtas confers a decision-making power on a "*persona designata*" then that individual must exercise the discretion-making power conferred upon him.

It is not permissible for the designated decision maker to exercise power or to apply an inflexible policy in accordance with the dictates of another body or authority. Reference was made to the decision of Walsh J. in *Murphy v. Dublin Corporation* [1972] I.R. 215 at pp. 238 to 239 where, in the context of the production planning inspector's report, it was stated:-

"He is a *persona designata* in that the holder of the office of the Minister for Local Government is the person designated for that function. By statute the Minister is the one who has to decide the matter – not the inspector. In doing so, the Minister must act judicially and within the bounds of constitutional justice."

36. Reference was also made to *The State (McLoughlin) v. Minister for Social Welfare* [1958] I.R. 1 at 27 where O'Daly J. dismissed the argument that the appeals officer, in holding himself bound by a Minister's direction, merely mistook the evidential value of the direction.

"I cannot accept it that the appeals officer was merely mistaken as to the evidential value of the direction of the Minister for Finance. He has not said so himself. What he did say was that he was bound to adhere to a direction, purported to have been given to him by the Minister for Finance, an observation which disclosed not concern for the niceties of the probative value, but the belief that a public servant in his position had no option but to act on the direction of a Minister for State. Such a belief on his part was an abdication by him of his duty as an appeals officer. That duty is laid upon him by the Oireachtas and he is required to perform it as between the parties that appear before him freely and fairly as becomes anyone called upon to decide on matters of right or obligation."

Reference was also made to policy rules that may disable the Minister from exercising her or his discretion in individual cases. The use of a policy or set of fixed rules must not fetter the discretion which is conferred by the Act as held by Kelly J. in *Mishra v. Minister for Justice* [1996] 1 I.R. 189 at 205.

In *British Oxygen Company v. Board of Trade* [1971] A.C. 610 at 625 Lord Reid observed that the circumstances in which discretions are exercised vary enormously. The general rule is that anyone who has to exercise a statutory discretion must not "shut his ears to an application". This was said in the context of the observation of Bankes L.J. in *Rex v. Port of London Authority, ex parte Kynoch Ltd.* [1919] 1 K.B. 176 at p. 184 where it was stated: -

"There are on the one hand cases where a tribunal in the honest exercise of its discretion has adopted a policy, and without refusing to hear an applicant, intimates to him what its policy is, and that after hearing him it will in accordance with its policy decide against him unless there is something exceptional in his case. I think counsel for the applicants would admit that, if the policy had been adopted for reasons which the tribunal may legitimately entertain, no objection could be taken to such a course. On the other hand there are cases where a tribunal has passed a rule, or come to a determination, not to hear any application of a particular character by whomsoever made. There is a wide distinction to be drawn between these two classes."

Lord Reid saw nothing wrong with that. However, he added:-

"[b]ut the circumstances in which discretions are exercised vary enormously and that passage cannot be applied literally in every case. The general rule is that anyone who has to exercise a statutory discretion must not 'shut his ears to an application'. In the applicant's submission the Minister had shut his ears to the application for an occasional import licence and had not been prepared to consider the application on its merits. No individual consideration to the application for an import licence was made."

He referred to *Dunne v. Donoghue* [2002] 2 I.R. 533 at pp. 542 and 543.

In that case an assistant commissioner of An Garda Síochána had issued a directive to garda district offices which required that when granting or renewing firearms certificates, district officers would have to ensure that the applicant had a secure firearms cabinet and a satisfactory level of security at his or her dwelling. The directive required that the storage facilities and security arrangements be available for inspection before a firearms certificate would issue or be renewed. The High Court

(Ó Caoimh J.) made an order of *certiorari* quashing the directive and the decision to refuse to grant the applicant a firearms licence. The Supreme Court in dismissing the appeal stated that the power conferred on a garda superintendent by s. 2 of the Act of 1925, was conferred on him as a *persona designata* and that, accordingly, it vested in him a discretion which he could not abdicate to anyone else – he could only exercise that discretion within any relevant statutory limitations and was, accordingly, acting *ultra vires* the provisions of the Firearms Acts.

The applicant believes that these letters constitute an express link between the granting of a certificate and a licence which fetters the Minister's discretion in making his decision contingent on an inflexible policy in relation to certificates. There is an antecedent question which, effectively amends the act.

## 7. Submissions on behalf of the respondent

Counsel for the Minister submitted that the operation of a general policy had long been regarded as legitimate. He referred, in this regard, to the decision of Keane J., as he then was, in *Carrigaline Community Television Broadcasting v. Minister for Transport, Energy and Communications* [1997] 1 I.L.R.M. 241 at p. 284 where *Kynoch* and *British Oxygen* were referred to by Keane J. and where he stated:-

"In the case of this and similar licensing regimes, the adoption by the licensing authority of a policy could have the advantage of ensuring some degree of consistency in the operation of the regime, thus making less likely decisions that might be categorised as capricious or arbitrary. But it is also clear that inflexible adherence to such a policy may result in a countervailing injustice. The case law in both this jurisdiction and the United Kingdom illustrates the difficulties in balancing these competing values."

The judgment then considers what is termed the *locus classicus* of the law in relation to *Kynoch* and *British Oxygen*.

Reference was also made to *The State (McGough) v. Louth County Council* [1956] 107 I.L.T.R. 13; *McNamee v. Bundoran U.D.C.* [1983] I.R. 213 (where O'Higgins C.J. declined to categorise as unlawful the policy of a housing authority of giving priority on the housing list to persons living within the functional area of the housing authority).

The respondent referred to Kelly J.'s decision in *Mishra v. Minister for Justice* [1996] 1 I.R. 189 at p. 205 where it was stated:

"In my view there is nothing in law which forbids the Minister upon whom the discretionary power ... is conferred to guide the implementation of that discretion by means of a policy or set of rules. However, care must be taken to ensure that the application of this policy or rules does not disable the Minister from exercising her discretion in individual cases. In other words, the use of a policy or a set of fixed rules must not fetter the discretion which is conferred by the Act. Neither, in my view, must the application of those rules produce a result which is fundamentally at variance with the evidence placed before the Minister by an applicant."

Kelly J. later at p. 206 distinguished between "the exercise of a true discretion as distinct from one which has become somewhat atrophied by reliance upon a policy or rules, which although useful and permissible, may, if care is not taken, have a stultifying affect".

Counsel for the respondent submitted that a general policy was eminently sensible in the present case. What was clearly relevant was the type of gun which the applicant sought to import. There was no quantitative restriction but a distinction made with regard to the calibre of weapons which distinction was recognised by the Firearms Act itself in relation to penalties for breaches of the Act. It was reasonable for the Minister to adopt a policy which allowed sporting weapons to be imported to the exclusion of other weapons. Moreover, the applicant did not advance any reason why he should be allowed to import such a weapon. It was submitted that it was for the applicant to provide an argument in respect of which the Minister could listen.

Counsel asked the court to bear in mind the words of Lavery J. in *O'Mahony v. Arklow Urban District Council* [1965] I.R. 710 at p. 735, which was quoted with approval by the Supreme Court in *Devlin v. Minister for Arts* [1999] 1 I.R. 47 at p. 58:-

"The issues now raised are alleged defects of form and not of substance. Most certainly there must be rules regulating the conduct of human affairs, be they public or private. Most certainly these rules must be observed and the Court must be vigilant to require observance. This does not mean that in the administration of justice the Court should parse and construe rules of procedures in a narrow and unreal way, looking for some flaw in procedure to invalidate a transaction where the requirements of justice and the substance of procedure have been observed."

## 8. Decision of the Court

8.1. The opposing submissions of counsel highlight the limitation to executive policy arising from the degree of discretion given by the Oireachtas to Ministers.

Counsel for the applicant argued that the adoption of a fixed policy regarding firearms certificates had nothing to do with an application for an occasional import licence. In taking account of the restrictions on the former the Minister had taken irrelevant considerations into account by virtue of that fixed policy which was, *de facto*, an amendment of the Firearms Act. Moreover, it usurped the role of the garda superintendent and involves a crossing of the domestic policy to import policy.

He referred, in particular, to the letters of Mr. Coleman of 17th January, 2003 and 6th February, 2003.

That letter referred to current policy regarding certificates and licences. The previous letter of 24th October, 2002 had referred only to the policy in relation to certificates and, had it been the only reason given, would have involved an irregular crossing of policy. The subsequent letter of 6th February, 2003 referred to policy regarding the licensing of imports and refers to the power given to the Minister by s. 17(4) of the Act.

8.2. The courts have recognised the legality of policy having the advantage of ensuring some degree of consistency in the operation of a regime as making less likely decisions that might be categorised as capricious or arbitrary. The court has also to bear in mind that inflexible adherence to such a policy may result in a countervailing injustice.

Keane J. in *Carrigaline Community T.V. Broadcasting v. Minister for Transport* [1997] 1 I.L.R.M. 241 at 284 distinguishes between the array of possibilities that are open to a Minister in the exercise of his discretion:-

"It is clear that in the case of at least some licensing regimes, questions of policy cannot play any part. This would be the case, for example, with television reception licences and driving licences, provided that, in the latter case, certain conditions of eligibility are met. At the other extreme, questions of policy must obviously affect the granting or refusal of planning permission and indeed in that area the authority is obliged by statute to adopt a specific set of policy objectives in the form of a development plan."

8.3. Section 17 of the Firearms Act, 1925 gives discretion to the Minister.

Subsection (3) provides that a *continuing* licence to import may be granted by the Minister if he thinks fit so to do to any registered firearms dealer subject to the conditions named in such licence.

Subsection (4) relates to an *occasional* licence to import. Such licence may be granted subject to the conditions named in such a licence, to:

(a) any person who holds or could be granted a firearms certificate for the firearm in respect of which the occasional licence is sought or

(b) any person who is a registered firearms dealer.

Both subsections confer discretion. The discretion in relation to the continuing licence may grant "if he thinks fit so to do" seems more extensive to "may grant" in relation to an occasional licence. The grant of an occasional licence to a registered firearms dealer to import a firearm is not dependent on the holding of a firearms certificate granted by a garda superintendent. The sale of such a firearm is, of course, subject to the restrictions contained in s. 10.

Accordingly, the practice of the garda superintendents cannot be said to fetter the discretion of the Minister in the implementation of his policy. Thus the antecedent question of whether a firearms certificate would be granted is not relevant to the decision to grant an import licence to the applicant whether occasional or not. Moreover, it seems to me, the fact that the applicant does not have to apply for a firearms certificate by virtue of his status as a firearm dealer means that such a consideration could not arise. This was confirmed by the Minister's letter of 6th February, 2003 which continued as follows:-

"As already stated in previous correspondence, current policy in regard to the licensing of firearms allows for only certain categories of firearms to be licensed. Therefore it follows that a firearms dealer may only trade in those firearms as defined by policy. The policy is not set out on a statutory basis.

As regards the refusal of the importation licence, your attention is drawn to the provisions of s. 17(4) of the Firearms Act, 1925, which provides, *inter alia*, that 'an occasional importation licence ... may be ... granted by the Minister' which confers a discretionary power on the Minister."

8.4 The Minister is under a duty to consider all applications made to him in a fair and impartial manner. He is also entitled to have regard to appropriate policy considerations. The relevant legislation provided a basis for a distinction between sporting firearms and other firearms. It all allows the Minister to impose conditions in relation to the import of firearms.

It does not seem that the Minister, in exercising his discretion in adopting and implementing such a policy or in imposing a condition, is fettered by the exercise of discretion of a garda superintendent in relation to the grant of a firearm certificate under s. 3 of the Firearms Act, 1925.

Where the Minister, or any competent authority, adopts a policy for specific or declared reasons, the court will not treat such adoption just because it takes a different view as to the cogency of the reasons. Only where the reasons stated are such that no reasonable authority could have relied on them could such a decision be set aside.

It does not seem to the court that the Minister has acted in an unreasonable manner in the exercise of his discretion.

In *Mishra v. Minister for Justice* [1996] 1 I.R. 189 at 206 the court held:-

"The essence of the exercise of a time discretion as distinct from one which has become somewhat atrophied by reliance upon a policy or rules, which although usual and permissible, may, if care is not taken, have a stultifying effect."

*Mishra* was applied in *Devlin v. Minister for Arts, Culture and the Gaeltacht* [1999] 1 I.L.R.M. 462 at 473. In that case the Supreme Court held that it was entirely permissible for the Minister to identify conditions which might be applied with advantage to most and perhaps all new licences granted pursuant to the Wildlife Act, 1976 relating to the possession of peregrine falcons to assist in the conservation of that species.

It seems to the court that an applicant has some obligation to give reasons why the Minister should deviate from a general policy.

The distinction in relation to sporting and other firearms contained in s. 2(a) as inserted by s. 3 of the Firearms Act, 1971, provide some basis for the policy discrimination. The section applies to penalties where a person is guilty of an offence under s. 2 in relation to the possession, use and carriage of firearms without a firearms certificate. A sporting firearm is defined as a firearm (other than a firearm of a kind defined by an order under the sub-section for the time being in force to be especially dangerous) which is a shotgun having a barrel of not less than 24 inches in length or a unrifled air gun or a rifled firearm of a calibre not exceeding .22 inches.

The applicant has not advanced any reason why an exception to the Minister's policy should be made in this particular case. No evidence of damage has been referred to in the applicant's affidavit.

In the circumstances the Court refuses the application.