



**THE COURT OF APPEAL**

**Neutral Citation Number [2020] IECA 207**

**Record Number: 2018/126**

**High Court Record No. 2014/185JR**

**Record No. 2018/120**

**High Court Record No. 2014/614JR**

**Baker J.  
McGovern J.  
McCarthy J.**

**BETWEEN:**

**DONA SFAR**

**APPLICANT**

**-AND-**

**THE MINISTER FOR AGRICULTURE, THE ATTORNEY GENERAL AND IRELAND**

**RESPONDENTS**

**-AND-**

**BETWEEN:**

**DONA SFAR**

**APPLICANT**

**-AND-**

**THE MINISTER FOR AGRICULTURE, THE ATTORNEY GENERAL AND IRELAND**

**RESPONDENTS**

**-AND-**

**HUMAN RIGHTS COMMISSIONER**

**NOTICE PARTY**

**JUDGMENT of Mr. Justice McCarthy on the 28th day of February 2020**

**Introduction**

These are appeals from the judgment of Twomey J. of the 20th of June, 2016. He gave one in respect of both and I do the same. The proceedings will be referred to here as the first case (being that with Court of Appeal Record No. 2018/126, High Court Record No. 2014/185JR) and the second case (Court of Appeal Record No. 2018/120, High Court Record No. 2014/614JR). The proceedings arise from the exercise by the first named

respondent ("the Minister") of certain powers under the Animal Health and Welfare Act, 2013 ("the Act").

1. The appellant ("Ms. Sfar") kept sheep and pigs on her property at Kilcurry, County Louth, but lived, if not still lives, at all times material to these proceedings in Dundalk. There was some debate in the proceedings as to the nature of certain structures on the lands and their condition: one of the structures is or was a dwelling house though in poor condition, to put the matter no further. The lands were visited by an agent of the Minister (a veterinary surgeon) pursuant to s.38 of the Act on diverse dates in 2014, on the 7th March, the 20th March, the 17th April, the 17th July, the 22nd July and the 8th of August.
2. The inspections were motivated by the necessity to ensure that the animals were properly cared for which, in the view of the Minister's agent they were not. This want of care, and here of course be reliant upon the judgment of Twomey J. as the trier of fact, extended to a lack of water, poor physical circumstances, danger of escape onto the roadway and the fact that the animals were in need of veterinary attention. After the visit of the 20th March 2014, the trial judge held that the Minister's veterinary surgeon visited Ms. Sfar at her home in Dundalk and relayed his concerns to her, outlining the actions which he considered needed to be taken for the welfare of the animals. Furthermore, it was held by Twomey J. that the surgeon had telephone conversations with Ms. Sfar after his visit of the 17th July, 2014.
3. On the 8th August the animals found on the lands were seized and delivered to an animal shelter where they were described by the trial judge as being housed in appropriate conditions and receiving immediate veterinary attention, including treatment for parasites. One of the animals was a lamb and it was so weak that it died within hours of its arrival at the shelter.
4. It is understandable perhaps that Ms. Sfar has not, in legal terms, been highly focused in her submissions on this and several other topics addressed in the High Court or here. Her extensive submissions are of minimal assistance to us accordingly. The submissions in response by the Minister have been of some assistance. In this judgment, accordingly, I am largely thrown back upon my own resources in seeking to focus on critical legal issues arising under the European Convention on Human Rights ("the ECHR") and otherwise. Perhaps understandably, in a number of respects, it was difficult for the High Court to do this. In approaching the matter in this manner, I have sought to address each issue, including legal issues, which are relevant, whether explicitly raised by Ms. Sfar or not.

### **Inspections**

5. The Animal Health and Welfare Act, 2013 permits authorised officers of the Minister (of which the veterinary surgeon was one) to perform certain functions for the purpose of *inter alia* of that Act, and in particular by the provisions of section 38 (1) such an officer may –

“(a) Enter and inspect, at all reasonable times, any land or premises where he or she has reasonable grounds for believing that –

- (i) an animal ... may be or has been present,
  - (ii) a record relating to an animal... [which] ... may be or has been present
- ...

By the same section at para. (b) of s.1 such an officer may –

‘Examine an animal...’

6. There is an explicit prohibition in section 38(5) to the effect that –

“38.—(5)An authorised officer shall not enter, except with the consent of the occupier, a private dwelling unless he or she has obtained a search warrant under s.45 [such warrants may be issued by the District Court] other than where he or she has reasonable grounds for believing that before a search warrant could be sought in relation to the dwelling under s.45 any evidence of an offence... is being or is likely to be disposed of or destroyed.”

7. And, section 38(6) is also directly relevant –

“38.— (6) An authorised officer, when exercising a power under this section, may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.”

### **Notices**

8. In consequence of the inspections what is known as an “Animal Health and Welfare Notice” (“Notice”) was served on Ms. Sfar pursuant to s.42 of the Act. By such a notice the surgeon (and he is usually a veterinary surgeon) may impose obligations (and did here) upon the recipient (Ms. Sfar) in relation to the care or treatment of animals (to put the matter shortly) and of an extensive kind as set out in that section. By ss. (4) thereof, a recipient must –

“(a) Comply with it until the notice expires or is annulled under s.43, and

(b) not cause or permit another person to contravene the terms of the notice.”

### **Seizures**

9. Furthermore, the Act makes provision in section 44 for seizure of an animal and I set out here the provisions thereof, *in extenso*.

“44.— (1) Without prejudice to an appeal under section 43, if—

- (a) the owner, occupier or person in charge of land or premises, or the owner or person in possession or control of a protected animal, an animal product, animal feed or other thing fails to comply with an animal health and welfare notice within the time specified in the notice,

- (b) an authorised officer has reasonable grounds for believing that an animal health and welfare notice, whether or not modified under section 43 (5), will not be complied with, or
- (c) an animal health and welfare notice has been confirmed with or without modification under section 43 (5) and the notice has not been complied with,

then the authorised officer may seize and detain the animal, animal product or animal feed and any means of transport or other thing used in connection with such.

(2) Where an animal, animal product, animal feed, means of transport or other thing is seized and detained under subsection (1), an authorised officer may—

- (a) sell, destroy or dispose of the animal, animal product, animal feed or other thing or cause it to be sold, destroyed or disposed of, or
- (b) take such other measures in relation to the animal, animal product, animal feed, means of transport or other thing as the authorised officer considers appropriate, in the circumstances.

(3) The profits, if any, arising out of the sale, destruction or disposal of an animal, animal product, animal feed, means of transport or other thing seized and detained under subsection (1) shall be paid to the owner of the animal, animal product, animal feed or other thing less any expenses (including ancillary expenses) incurred in connection with the seizure, detention, sale, destruction or disposal.”

10. Twomey J. found that after the first meeting the surgeon prepared recommendations *inter alia* for the issue of a statutory notice. Twomey J. also found that after a subsequent visit on the 20th of March 2014 when the surgeon visited in the premises for the first time:

“... that the conditions [of the animals] were similar to those witnessed on his first visit and he also noted that one of the sheep appeared to be emaciated. He visited the applicant at her home in Dundalk immediately after this visit and relayed his concerns. He outlined the various actions which needed to be taken by her i.e. the provision of a permanent supply of clean fresh water, clean dry bedding, adequate shelter, adequate feed, secure fencing and veterinary attention [for the animals].”

11. On his subsequent visits on the 17th of April and the 17th of July the concerns of the surgeon were reinforced, and Twomey J. found that:-

*“Mr. O’Brien Lynch [the surgeon] had some telephone conversations with the applicant [as set out above] after this visit. He raised his concerns regarding the need for some of the animals to have veterinary care. As a result of the conversations and visits and return visits to the property, [the surgeon] remained concerned about the welfare of the animals and as a consequence ... [he] ... formed*

*the opinion that he should serve an animal health and welfare notice (a "Notice") ... this was served on the 21st July, 2014."*

12. The surgeon visited the property on the 22nd July when his concerns were again fortified, and Twomey J. held that as a result of a later visit on the 8th August, 2014:-

*"His significant concerns had not been addressed by the applicant and for this reason the animals were seized and delivered to an animal shelter where they were housed in appropriate conditions and received immediate veterinary attention including treatment for parasites. One of the lambs seized was extremely weak and died within hours of arriving at the shelter."*

### **Appeals**

13. An appeal lies against a statutory notice, pursuant to section 43 of the Act and on the grounds that any notice is "unreasonable having regard to this Act". This appeal to the District Court permits the judge to hear the matter on the merits.
14. Subsection (2) of that section *inter alia* prescribes the procedure to be adopted in respect of such appeals including provision to the effect that any notice of appeal must be served "not later than 48 hours prior to the hearing of the appeal". On such hearing or whilst an appeal is pending ss. (4), (5) & (6) provide as follows: -

"(4) An animal health and welfare notice in respect of which an appeal is brought under this section shall have effect pending the making of an order under subsection (5).

(5) On the hearing of an appeal the judge of the District Court may confirm, modify or annul an animal health and welfare notice.

(6) A person, including a person on whom an animal health and welfare notice has been served, shall not—

- (a) pending the determination of the appeal of the notice, deal with a protected animal, animal product, animal feed, land or premises, means of transport or other thing to which the notice relates, other than in accordance with the terms of the animal health and welfare notice, or
- (b) if the notice is confirmed or modified on appeal, deal with a protected animal, animal product, animal feed, land or premises, means of transport or other thing to which the notice relates other than in accordance with the terms of the animal health and welfare notice as confirmed or modified."

15. There is an appeal against the decision of the District Court to the Circuit Court in the ordinary way.

16. Ms. Sfar's appeal was heard in the District Court on the 14th November, 2014 and the 29th January, 2015 and having been unsuccessful, she appealed to the Circuit Court and that appeal was heard on the 23rd April, 2015. The court upheld the Notice.

**Claims**

17. In the first action Ms. Sfar seeks the following relief namely: -

- (a) A declaration that her livestock on her holding in Kilcurry County Louth are not subject to the European Council Directive 98/58/EC (the 'Directive') and the European Communities (Protection of Animals Kept for Farming Purposes) Regulations SI No. 705 of 2006 (the '2006 Regulations') and that the Department of Agriculture officials acted *ultra vires*;
- (b) A declaration that she is entitled to damages for the interference with her ownership rights over these animals and property guaranteed by the Constitution and ECHR and its protocols on account of what she asserts was an unlawful entry to property in breach of her Article 8 right to privacy;
- (c) A declaration that she has a legitimate expectation that her pig herd number would not be cancelled without probable cause or justification and that it is in the interests of justice that she should be allowed to retain her pig herd number;
- (d) An injunction preventing officials from the Department of Agriculture from entering her private property, seizing her livestock or filming thereon without either her permission or legal authorisation on any grounds whatsoever unless authorised by the courts.

18. In the second action she has sought the following reliefs, namely:-

- (a) A declaration that s. 38(1)(a) of the 2013 Act insofar as it permits a power of entry without judicial control is incompatible with Article 8 of the ECHR on the grounds that the definition of "land" and "premises" contained in the 2013 Act does not exclude the curtilage area of a dwelling;
- (b) A declaration that s. 31 of the 2010 Regulations is incompatible with Article 8 of the ECHR as it does not exclude the curtilage area of dwelling;
- (c) A declaration that the unqualified use of cameras by authorised officers under s. 31(x) of the 2010 Regulations is incompatible with Article 8 of the ECHR;
- (d) A declaration that s. 38(6) of the 2013 Act is incompatible with Article 8 of the ECHR;
- (e) A declaration that s. 44 of the 2013 Act is contrary to Article 13 of the ECHR as it permitted the seizure of her animals notwithstanding the fact that she had appealed the welfare notice to the District Court, and therefore deprived her of an effective remedy to recover her animals;

- (f) A declaration that the 2013 Act denied her right to be heard under European law since it made no provision for her to make representations prior to the issue of the welfare notice;
- (g) A declaration that the issue of the welfare notice was void or voidable due to procedural impropriety;
- (h) A declaration that the seizure of the applicant's animals breached Article 1 Protocol 1 of the ECHR;
- (i) A declaration that the multiple entries by the Department of Agriculture officials into the curtilage of her premises between March 2014 and 8th August, 2014, breached her personal rights under Article 40.3.2° and Article 43.1° of the Constitution;
- (j) A declaration that the absence of a right under the 2013 Act to apply for a stay of the welfare notice pending the outcome of her appeal to the District Court amounts to a breach of her rights to due process and fair procedures;
- (k) A declaration that the seizure of her animals after a notice of appeal to the District Court had been served on the Department of Agriculture and their failure to serve a notice of seizure within 24 hours of the seizure of her animals breached her right to due process and fair procedures and was therefore void;
- (l) Damages and or compensation for breach of her rights under the ECHR, breach of her constitutional rights, loss and damage to her animals;
- (m) An injunction preventing the disposal of her animals seized on the 8th August, 2014;
- (n) An injunction preventing any further seizures of her animals.

**First Action**

19. With the exception of the relief sought at paragraph 16(b) above which relates to claims by the applicant of breaches of her rights to privacy under Article 8 of the ECHR (which I feel are best addressed when dealing with ECHR issues arising in the second action). I turn now to the relief sought in this action: -

- (a) ***A declaration that the livestock of the applicant on her holding in Kilcurry County Louth are not subject to the European Council Directive 98/58/EC (the 'Directive') and the European Communities (Protection of Animals Kept for Farming Purposes) Regulations SI No. 705 of 2006 (the '2006 Regulations') and that the Department of Agriculture officials acted ultra vires when they instructed the applicant in matters connected with these regulations regarding her livestock and the property at Kilcurry County Louth without warrant under those regulations.***

20. Twomey J. rightly rejected Ms. Sfar's application in this respect because it has been clear at all times that the Minister or his officers never relied upon either the Directive or the Regulations referred to but at all times proceeded under the Act.

**(c) A declaration that the applicant has a legitimate expectation that her pig herd number would not be cancelled without probable cause or justification and that it is in the interests of justice that she should be allowed her pig herd number.**

21. Again Twomey J. correctly rejected this aspect of Ms. Sfar's claim because it has been conceded by the Minister that her pig herd number has not been cancelled and is merely suspended.

**(d) An injunction preventing officials from the Department of Agriculture from entering the applicant's private property or filming on the applicant's private property without either her permission or legal authorisation or seizing of her livestock on any grounds whatsoever unless authorised by the courts.**

22. Twomey J. rejected her claim in this regard pointing out that an injunction could:-

*"Only be granted where the court is of the view that the rights of the applicant have been or are about to be breached"*

He held that Ms. Sfar had not provided him with any evidence in that regard. Effectively, what was being sought was a *quia timet* injunction, and the proofs had not been met. In the Act in s.38 expressly provides a right of entry. The reliefs by way of injunction extended to seeking an order restraining filming on Ms. Sfar's property (which had taken place in the course of entry or inspections). The Act, at s.39(6) permits the Minister's officers when exercising a power of entry *inter alia* to take with them: -

*"... any equipment or materials to assist the officer in the exercise of the power"*

and the judge took the view that equipment extended to photographic or video equipment. I can find no fault with this conclusion.

### **The second action**

23. I turn now to the second action and, as indicated above deal with the relief sought at paragraph 16(b) as well. With respect to -

**(a) A declaration that s. 38(1)(a) of the 2013 Act insofar as it permits a power of entry without judicial control is incompatible with Article 8 of the ECHR on the grounds that the definition of land and premises contained in the 2013 Act does not exclude the curtilage area of a dwelling.**

And;



**(d) A declaration that s. 38(6) of the 2013 Act is incompatible with Article 8 of the ECHR.**

Twomey J. rejected Ms. Sfar's claims for relief under these heads by virtue of the provisions of section 5(1) of the European Convention on Human Rights Act, 2003 which is to the following effect:-

"In any proceedings the High Court or the Supreme Court when exercising its appellate jurisdiction, may, having regard to the provisions of section 2, on application to it in that behalf by a party, or of its own motion, and where no other legal remedy is adequate and available, make a declaration (referred to in this Act as 'a declaration of incompatibility') that a statutory provision or rule of law is incompatible with the State's obligations under the convention provisions."

24. He considered that in neither case could it be said that there was no adequate or available legal remedy other than an application for a declaration of incompatibility. In each case he took the view (by way of example) that she could have sought to condemn the relevant statutory provisions as being repugnant to the Constitution. A party need not canvass or pursue arguments or proceedings which might be unfounded or have no reasonable prospect of success for the sole purpose of being in a position to seek declaratory relief under the Act. It might well be the case that a statutory provision might not be open to any challenge for example on the basis of putative repugnancy. To put the matter in another way a given event, or action, or state of affairs might well be unobjectionable in our law but arguably be repugnant to the ECHR. I do not think the provision is to be read as imposing an obligation to negative any hypothesis. For these reasons I think that the trial judge ought to have engaged with the asserted breaches of the ECHR.
25. Reference has been made in the Minister's submissions to *Carmody v The Minister for Justice* [2010] 1 IR 635. There, declaratory relief was sought by the plaintiff that a certain provision of the Criminal Justice (Legal Aid) Act, 1962 was invalid as being repugnant to the Constitution and, also, a declaration pursuant to s.5 of the Act of 2003 that the same section was incompatible with the obligations of the State under the provisions of the ECHR. The procedural issue arose as to which aspect of the case should be dealt with first, i.e., the constitutional issue or that under the Convention. The trial judge decided the Convention aspect first. I do not propose to set out here *in extenso* the relevant passages from the judgment of Murray C.J. beyond saying, firstly, that he said that:-

*"The issues in proceedings should be determined, where one of them involves the constitutionality of an Act is ultimately and finally a matter for the court rather than the parties, while taking into account any views or submissions tendered on their behalf".*

On the facts of that case he took the view that a declaration of incompatibility of the statutory provision in question could be said to be a remedy which could resolve the issue

between the parties (something which he considered was a sufficient ground for considering the constitutional issue first). He took the view that:-

*"... When a party makes a claim that an Act or any of its provisions is invalid for being repugnant to the Constitution and at the same time makes an application for a declaration of incompatibility of such Act or some of its provisions with the state's obligations under the Convention, the issue of constitutionality must first be decided."*

And he went on to say that:-

*"If a court concludes that the statutory provisions in issue are incompatible with the Constitution and such a finding will resolve the issues between the parties as regards all the statutory provisions impugned, then that is the remedy which the Constitution envisages as the party should have. Any such declaration means that the provisions in question are invalid and do not have the force of law. The question of a declaration pursuant to s. 5 concerning such provisions cannot then arise. If, in such a case, a court decides that the statutory provisions impugned are not inconsistent with the Constitution that it is open to the court to consider the application for a declaration pursuant to s. 5 if the provisions of the section including the absence of any other legal remedy, are otherwise met."*

26. Accordingly, I think that Twomey J. fell into error by refusing to deal with the Ms. Sfar's claims under these heads on the merits.

**(b) A declaration that s. 31 of the 2010 Regulations is incompatible with Article 8 of the ECHR as it does not exclude the curtilage area of dwelling.**

**(c) A declaration that the unqualified use of cameras by authorised officers under s. 31(x) of the 2010 Regulations is incompatible with Article 8 of the ECHR.**

27. Twomey J. in my view rightly took the view that as he put it: -

*"... there is uncontroverted evidence provided by the respondents that the actions of the authorised officers of the Department of Agriculture about which the applicant complains were taken by them, not pursuant to those Regulations, but rather pursuant to their powers under the 2013 Act. It is also clear from the face of the Welfare Notice issued in this case that it was issued pursuant to s. 42 of the 2013 Act. Accordingly, there is no basis for the applicant to seek declaratory relief under (sic) those Regulations, since they have no application to the actions of the authorised officers of the Department of Agriculture in this case. ..."*

**(h) A declaration that the seizure of the applicant's animals breached Article 1 Protocol 1 of the ECHR.**

- (e) ***A declaration that s. 44 of the 2013 Act is contrary to Article 13 of the ECHR as it permitted the seizure of her animals notwithstanding the fact that she had appealed the Welfare Notice to the District Court, and therefore deprived her of an effective remedy to recover her animals.***
- (j) ***A declaration that the absence of a right under the 2013 Act for the applicant to apply for a stay of the Welfare Notice pending the outcome of her appeal to the District Court amounts to a breach of her rights to due process and fair procedures.***
- (k) ***A declaration that the seizure of the applicant's animals after a notice of appeal to the District Court had been served on the Department of Agriculture and their failure to serve a notice of seizure within 24 hours of the seizure of her animals breached her right to due process and fair procedures and was therefore void.***

28. The existence of rights under Article 1 Protocol 1 is best dealt with first as the other relief claimed is inextricably linked: -

“ **Protection of Property**

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

29. It seems to me that the issue of “effective remedy” and “due process and fair procedures” are inextricably linked with the merits on the issue of Ms. Sfar’s property rights. I will elaborate on the material procedural rights later in this judgment in the context of the merits and in my view no fault can be found with Twomey J.’s rejection of any claim under this head.

30. It is appropriate in this context, given the necessity for legislation of the type under consideration to quote again here the passage from the judgment of Humphreys J. in *Sfar v. The Minister for Agriculture* [2016] IEHC 165, as set out in Twomey J.’s judgment: -

*“Animals are powerless to protect themselves against neglect and cruelty. Upholding their welfare is an urgent matter and must not be put on hold pending judicial review proceedings. [my emphasis] The mechanisms to uphold animal welfare include prosecution followed by forfeiture in the event of a conviction. The applicant is of course denying criminal liability but she can make what applications*

she wishes to the District Court if the court is called upon to exercise any powers in this regard.”

31. In the first instance it seems to me that any question of seizure pursuant to s.44 of the Act can take place only in the event of non-compliance with a notice issued under s.42 and before such a notice can be issued by or on behalf of the Minister. His officer must be of the “opinion” as to a number of alternative states of affairs including, by way of example at s.42(1)(c) and (d) that a person is not or is not capable of taking care of “a protective animal”. I need not further elaborate here on the nature of the opinion which founds the issue of a notice and ultimately a seizure. The opinion must be reasonable and is capable of challenge by way of judicial review. In addition, the legislation provides for the remedy of an appeal against a notice.
32. Seizure or detention of an animal may take place in limited circumstances as elaborated in s.44(1) paras. (a) to (c). Seizure and detention may be followed *inter alia* by sale, destruction or disposition. It will be seen that the profits, if any, arising out of the sale destruction or disposition must be paid to the owner: see 44(3). From such profits are also deducted “any expenses (including ancillary expenses incurred in connection with such seizure, detention, sale, destruction or disposal)”. However, the Minister’s capacity to deduct expenses incurred is not unlimited as s.44(5) makes provision for a party to be heard in relation to any costs sought to be recovered. Any decision of the Minister pursuant to the section would similarly be subject to judicial review.
33. Article 1 of Protocol 1 has been described in *Human Rights Practice*, Simor and Emmerson (15.003) as follows: -

“... [it] extends to protect individuals from arbitrary interference by the State with their existing possessions. It nevertheless recognises the right of the State to control the use of, and even to expropriate the property of individuals in the public interest. The Convention and the institutions have sought to ensure that any interference with property rights is conducted in a manner which is not arbitrary and which is in accordance with law. As regards the necessity for interference, however, the Court and Commission have generally accorded states a wide margin of discretion.”
34. There is no doubt but that animals are property. The Court has in its case law distinguished between *de jure* and *de facto* deprivations – obviously it is the substance which counts.
35. Where interference is to be justified as here, that work (at paras. 15.041 to 15.043) puts the matter as follows: -

“Deprivation. – In order for a deprivation to be justified... it must be ‘in the public interest’. In order for a deprivation to be justified... it must be ‘in the public interest’, subject to conditions laid down by law... only in the most exceptional

circumstances will deprivation be justifiable if compensation is not paid. The measure must be proportionate to the aim pursued.

Control of use. – For a measure constituting a control of use to be justified it must be in accordance with law and for ‘the general interest’ or for the ‘securing of the payment of taxes or other contributions or penalties’. The measure must be proportionate to the aim pursued.

Peaceful enjoyment of possessions. – Where interference in the peaceful enjoyment of possessions, which does not constitute either a deprivation or a control of use, to be justified, it must also be pursued in accordance with law, in the public interest and proportionate to the aims pursued.”

The authors go on to say (at para. 15.051) that:-

“Procedural safeguards are relevant in two respects. First, as a means of ensuring that an interference is ‘in accordance with law’ and secondly in order to determine whether the interference has struck a fair balance between the individual’s rights and the general interest...”

Furthermore, and at the same paragraph, the authors say that –

“In determining whether a fair balance has been struck between an individual’s rights and the general interest, the Court will therefore have regard to the extent to which the applicant was able to put forward his arguments in the course of independent proceedings...”

36. Deprivation arises in the present case in the narrow sense by virtue of the seizure or the retention of the animals pending disposition of the proceedings. Of direct relevance are the procedural safeguards by the making of provision for the immediate engagement of the District Court, appeal to the Circuit Court and access to the High Court by way of judicial review.
37. Appeals to the District Court are full hearings on the merits. There is no reason to suppose that a party cannot apply for an urgent hearing in the District Court or thereafter in the Circuit Court should the need arise. One must presume that the courts will entertain and adjudicate upon the applications in accordance with the law. In the event of a deprivation, whether temporary or permanent, of the property the benefit of any sale or disposition is to be paid to the owner, and the owner is protected against excessive or unreasonable demands or deductions in respect of costs or expenses attendant upon seizure and conduct thereafter in connection therewith because of her entitlement to be heard and the supervision of a Minister’s conduct by judicial review. It seems inconceivable that unreasonable costs or expenses could be sought or deducted accordingly. She is accordingly at no financial loss by virtue of seizure compensation payable at market value.

38. Dealing firstly with the position after the issue of the welfare notice, Ms Sfar complains that she had no right to apply for a stay pending the outcome of her appeal to the District Court and in the absence of notification "within 24 hours" (the period chosen by her was arbitrary) of the seizure of her animals, her rights to due process and fair procedures were breached. It is not clear on what legal basis she claims such breaches and whether she claims a breach of the ECHR or of the Constitution, but it seems to me that the scheme of protection for animals contemplated by the Act are not undermined because of the absence of the capacity of the court to grant a stay or the absence of a duty to notify of seizure. In the latter case, having regard to the power of seizure, the service of a notice and the fact that a party has entered an appeal it seems inconceivable that in practice any prejudice would flow from the absence of such a notice. There has been no suggestion here on the facts that there was any actual prejudice suffered by Ms Sfar by virtue of the absence of notice and that alone is sufficient to dispose of the point.
39. I think, accordingly, that Twomey J. was right when he came to the conclusion that a fair balance had been struck between Ms. Sfar's rights and the public or general interest in the protection of the welfare of the animals. The conditions provided for by law were adhered to, in the sense in which that term is understood in the jurisprudence. Because of the fact that the protection of animal welfare is dependent upon human intervention often of an extremely urgent kind, it seems to me that the power of seizure (and what flows therefrom) is lawfully limited, and that sufficient procedural safeguards exist. I am accordingly of the view there was no breach by the seizure.
40. Article 13 of the Convention is as follows:

" **Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in a professional capacity."

Procedural rights as indicated above are intrinsically linked to the consideration of substantive rights.

Two separate issues arise in the present case as to both the ambit or meaning of Art. 13 and whether or not in law or in fact the seizure of the animals deprived Ms. Sfar of an effective remedy. There would have been no lawful basis for the continued retention of the animals by the Minister if she was successful in her appeal, and she had remedies by way of judicial review or in damages in the event of unlawful retention or detention of the animals after the disposition of the proceedings.

41. The only issue of law, accordingly, which need be decided in the immediate context is whether or not there was a breach of the rights to due process and fair procedures because a stay could not be sought on the notice. The provision enjoys the presumption of constitutionality and absent a direct challenge to any relevant Article, I am not

prepared to take the view that the trial judge was wrong or that the appeal should be allowed upon this basis.

**(f) A declaration that the 2013 Act denied the applicant her right to be heard under European law since it made no provision for her to make representations prior to the issue of the Welfare Notice.**

**(k) A declaration that the seizure of the applicant's animals after a notice of appeal to the District Court had been served on the Department of Agriculture and their failure to serve a notice of seizure within 24 hours of the seizure of her animals breached her right to due process and fair procedures and was therefore void.**

42. Twomey J. addressed these issues by first referring *inter alia* to the engagements between the Minister's surgeon and Ms. Sfar as follows:-

*"[39] Under heading (k), the applicant claims that the failure of the Department of Agriculture to serve a notice of seizure of the animals within 24 hours of their seizure constitutes a breach of her right to due process and fair procedures. The Court does not agree with this claim. On the facts of this case, the seizure of the animals only occurred after several engagements between the Department's authorised officer and the applicant. The first engagement, which was a visit to the applicant at her home on the 20th March, 2014, led to no marked improvement in the conditions of the animals by the date of the next inspection on the 17th April, 2014. This was followed by a further inspection of the lands on the 17th July, 2014, and phone conversations between the Department and the applicant. The concerns of the Department were not addressed by the applicant. This resulted in the Welfare Notice of the 21st July, 2014, instructing the applicant to carry out improvements of the conditions and treatment of the animals. When on the 8th August, 2014, Mr. O'Brien-Lynch visited the lands and discovered his concerns had not been addressed, he arranged for the seizure of the animals. In these circumstances, and in light of the serious animal welfare issues that arose regarding the applicant's animals when in her care (including the death of a lamb within hours of it being brought to an animal shelter), this Court is of the view that the applicant's rights to due process and fair procedures were vindicated by the foregoing engagement which she had with the Department over a period of five months prior to the seizure of her animals."*

Furthermore, he referred to the relevance of the same facts as so found when dealing with the second of the two issues, namely, that pertaining to whether or not she had a right to be heard before the Notice was issued. In particular, he said that:-

*"[41] ... As is evidenced by the facts outlined under the heading (k), there was considerable engagement between the Department of Agriculture and the applicant before the issue of the Welfare Notice. The applicant had ample opportunity to have her views heard by the authorised officer before the issue of the Welfare Notice.*

*This Court cannot make a finding that the applicant was deprived of her right to be heard."*

I find no error in that approach.

**(i) A declaration that the multiple entries by the Department of Agriculture officials in to the cartilage of the applicant's premises between March 2014 and 8th August, 2014, breached the applicant's personal rights under Article 40.3.2° and Article 43.1° of the Constitution.**

43. Here, Ms. Sfar appears to be taking issue with the manner in which the Minister's agents exercised their statutory powers by virtue of the number of entries over a number of months between March and August 2014. It is alleged that these entries breached her personal rights under Articles 40.3.2 and 40.3.1 of the Constitution.

44. On the findings of fact of Twomey J. it is plain that each entry was justified, and the Act does not impose any limitation, *per se*, on the number of times on which entry may take place. I do not exclude in principle the idea that in a given case repeated entries might not be permitted under the Act but nothing of that kind arises here.

**(b) A declaration that the applicant is entitled to damages for the interference with her ownership rights over these animals and property guaranteed by the Constitution and the European Convention on Human Rights ('ECHR') and its protocols and for unlawful entry to property and breach of her Article 8 right to privacy.**

**(i) A declaration that the multiple entries by the Department of Agriculture officials in to the curtilage of the applicant's premises between March 2014 and 8th August, 2014, breached the applicant's personal rights under Article 40.3.2° and Article 43.1° of the Constitution.**

45. No damages or declaratory relief can arise under the ECHR or under the Constitution since no beach of rights thereunder has in this action been established.

**(m) Injunction preventing the disposal of her animals seized on the 8th August, 2014.**

**(n) Injunction preventing any further seizures of her animals.**

There is no suggestion of repetition of seizure or any suggestion that the animals ought to be returned, having regard to the decisions herein.

**(g) A declaration that the issue of the Welfare Notice was void or voidable due to procedural impropriety.**



46. The grant of this relief would be dependent upon successful application by Ms. Sfar in relation to substantive criticisms of the notice and since these have been rejected this relief does not arise.

**Relief**

47. I would accordingly allow this appeal in respect of the refusal of the trial judge to grant the relief sought in the second action as follows:-

- (a) A declaration that s. 38(1)(a) of the 2013 Act insofar as it permits a power of entry without judicial control is incompatible with Article 8 of the ECHR on the grounds that the definition of land and premises contained in the 2013 Act does not exclude the curtilage area of a dwelling.

And;

- (d) A declaration that s. 38(6) of the 2013 Act is incompatible with Article 8 of the ECHR.

and remit those claims to the High Court for retrial.

48. I would dismiss the appeal in all other respects.