

KEVIN AQUILINA

**REGISTRAR OF COURTS' DUTIES
VIS-À-VIS THE JUDICIARY:
SOME CONFLICTING INTERPRETATIONS**

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REGISTRAR OF COURTS' DUTIES *VIS-À-VIS* THE JUDICIARY: SOME CONFLICTING INTERPRETATIONS

Kevin Aquilina

Introduction

This paper deals with a historical account of the conflicting opinions as to the proper interpretation of the precise duties carried out by the Registrar of Courts under article 57(3) of the Code of Organization and Civil Procedure¹ (hereinafter referred to as 'the Code') prior to its amendment on 30 March 2004. It will first set out the provision of article 57(3) of the Code which dealt with the duties to be carried out by the Registrar of Courts *vis-à-vis* the judiciary. The legislative history of this provision under examination will be analysed in order to establish whether any substantial changes have been made thereto throughout the passage of time bearing in mind that nearly 120 years have elapsed since its entry into force. Two case studies which revolve on the proper application and interpretation of this provision will also be considered. Reference will also be made to the latest amendment to the provision under scrutiny effected by the Courts and Tribunals Procedures Act, 2002² and I will end by recommending that this provision should be updated to present needs.

I. Text of article 57(3)

In terms of article 57(3) of the Code, it is provided that the Registrar of Courts 'shall take orders from the judicial authorities in relation to any judicial proceedings and in relation to any judicial act, that is to say:

- (a) in the superior courts in matters concerning a particular court, shall take orders from the judge or from the judges, if they are two or more, of that court; in other cases, he shall take orders from the Chief Justice;
- (b) in the inferior courts, shall take orders from the magistrates of the particular court, or, if the magistrates appointed to sit in a particular court are two or more and the matter does not refer to the business of any one of them in particular, from the senior magistrate.'

II. Legislative history of article 57(3) of the Code

Article 57(3) of the Code was enacted in 1884 but since then was amended five times as explained hereunder.

1. Currently Chapter 12 of the Laws of Malta. The said Code, enacted by Ordinance IV of 1854, was promulgated by Proclamation No. VI of the 1st May, 1855 and came into force on 1st August, 1855.
2. Act No. XXXI of 2002.

II.1. Ordinance No. IV of 1854

Article 57(3) of the Code, as originally found in Ordinance No. IV of 1854, was then numbered section 74 and provided as follows:

‘74. The Registrar has under his direction and responsibility the registry over which he is placed, and the Officers attached to it; and, saving the provisions contained in these Laws and in the regulations referred to in article 38, he receives his orders from the Judicial Authorities, namely:

The Registrar of the Superior Courts, in matters concerning any one particular Court, from the Judge, or from the Judges, if they be two or more, of that Court; in other cases, from the President of the Court of Appeal, as Chief Judge;

The Registrar of an Inferior Court, from the Magistrate or from the Syndic of the Court; and if the Magistrates appointed to sit in the Court, be two or more, and the subject do not refer to the business of any one of them particularly, by the Senior Magistrate.’

The original version of the law has been amended as follows:

II.2. By Ordinance No. VI of 1880

Ordinance No. VI of 1880 amended the laws relating to the Registries and the Officers of the Courts of Justice. Section 6 of Ordinance VI of 1880 revoked section 74 of the Code and replaced it by a new section 74. On further analyses, it transpires that the new article 74 is a reproduction of the previous version with one sole difference: the word ‘authority’ in the singular was substituted by the word ‘authorities’ in the plural in order to refer to ‘judicial authorities’. After all, the provision refers to more than one member of the judiciary and, hence, for precision’s sake the expression ‘authority’ had to be written in the plural.

II.3. By Ordinance No. XV of 1913

Ordinance No. XV of 1913 was enacted to amend the Laws of Organization and Civil Procedure. Section 22 of this Ordinance simply deleted the words ‘or from the Syndic’, from the third paragraph of article 74. The office of Syndic – who had the same jurisdiction as that of a Magistrate sitting in the Court of Magistrates of Judicial Police but on a district level – was abolished by Ordinance No. XV of 1913 and has since then never been reintroduced in our laws of civil procedure.

II.4. By Act No. X of 1975

The Code of Organization and Civil Procedure (Amendment) Act, 1975, through section 3 thereof, amended section 74 of the Code. However, it has to be pointed out that in the meantime section 74 had been renumbered by the Law Commission

in the Revised Edition of the Laws of Malta of 1942 as section 55 thereof. The amendment consisted in adding the word 'as' in the provision in the sense that the words 'the Registrar of the Superior Courts' in paragraph (a) of sub-article (2) – the sub-article under examination – were substituted by the words 'as the Registrar of the Superior Courts' and the words 'the Registrar of an Inferior Court' in paragraph (b) of the same sub-article were substituted by the words 'as the Registrar of an Inferior Court'. In other words, the amendment was a stylistic amendment consisting in the addition of the word 'as' before 'the Registrar' whether it is the Registrar of the Superior Courts or any one of the Registrars of the Inferior Courts. Hence the amendment in question does not alter at all the substance of the provision of the Code, now renumbered as section 55, under examination.

II.5. By Act No. XXIV of 1995

Once again, in 1984, section 55 was renumbered by the Law Commission in the Revised Edition of the Laws of Malta of 1984 as section 57 of the Code. This latter provision was substituted by section 28 of the Code of Organization and Civil Procedure (Amendment) Act, 1995.³ Reference is thus made to sub-article (3) thereof – the provision under scrutiny - which reads as follows:-

'(3) Subject to the provisions of this Code and to any rules made under section 29, the registrar shall take orders from the judicial authorities in relation to any judicial proceedings and in relation to any judicial act, that is to say:

(a) in the superior courts in matters concerning a particular court shall take orders from the judge or from the judges, if they are two or more, of that court; in other cases, he shall take orders from the Chief Justice;

(b) in the inferior courts shall take orders from the magistrates of the particular court, or, if the magistrates appointed to sit in a particular court are two or more and the matter does not refer to the business of any one of them in particular, from the senior magistrate.'

III. Case Studies

At this juncture, I would like to focus on the interpretation given to the provision under examination by Chief Justice Sir Adriano Dingli (the original drafter of the provision), Chief Justice Sir Arturo Mercieca, Sir Harry Luke (then Officer Administering the Government) and the Right Honourable J.H. Thomas, Secretary of State for the Colonies.

3. Act No. XXIV of 1995.

III.1. Sir Adrian Dingli's reading of the provision under consideration

On 28th February, 1881 Sir Adrian Dingli, then Chief Justice, wrote to the Hon. Sir Victor Houlton, G.C.M.G., Chief Secretary to Government, that a circumstance had occurred, within the last two days, which called for an explanation of the powers, over the officers composing the Establishment of the Registry of the Superior Courts, that His Excellency the Governor was disposed to acknowledge as inherent in the office of, or to grant to, the Chief Justice, to enable him to carry out the duties placed upon him by the law, in that special capacity.⁴

As the case had not, at the time of writing, yet assumed a definite character, Sir Adrian thought it was his duty to refrain from entering into particulars, a statement of which, in a public letter from himself, might unnecessarily, and perhaps unfairly, have placed the officer concerned in a very disagreeable position. He therefore hoped that the Governor would approve that the Chief Justice submitted the question in general terms, for general instructions.

Sir Adrian referred to articles 36 and 74 of the Code, as amended by Ordinance No. VI of 1880, in terms of which there was established only one Registrar, or Head of only one Registry of the Superior Courts, instead of the former five Registries and five Registrars; and the President of the Court of Appeal, whose duties and powers were formerly coextensive with those of each of the other five judges, was appointed Chief Justice with some special duties, as explained below.

The Chief Justice explained that formerly each of the five Registrars received his orders from the Judge presiding in the Court to the Registry to which he belonged, and there was no person responsible for the general conduct of, and maintenance of order and discipline in, the Establishment, as composed of five Registries.

However, by the said article 74, the position was changed and the Registrar now had under his direction and responsibility the Registry of all the Superior Courts, and all the Officers attached to it, and, saving other provisions contained in the Code, or in Regulations that could be made under article 38, he received his orders:-

‘in matters concerning any one particular Court from the Judge or from the Judges, if they are two or more (as in the case of the Court of Appeal, which consists of the President and two Judges), of that Court; in other matters, from the President of the Court of Appeal, in his capacity of Chief Justice.’

In Sir Adrián's authoritative view, this last mentioned provision had made the Chief Justice responsible for the general conduct of, and maintenance of order and discipline in, the whole establishment. But the quoted law contained no provision

4. Vide Colonial Office File No 89235 of 1936 held at the Public Records Office, Kew Gardens, London, UK.

as to what was to be done in case of a breach of an order from the Chief Justice, by an employee of that Establishment; and, without some instruction from His Excellency the Governor, vesting in that functionary some executive power, it was impossible for him to discharge the special duty above referred to, in a satisfactory manner.

The Chief Justice thus suggested that, in case of a wilful disobedience to a lawful order from the Registrar or from the Chief Justice, or in case of a voluntary neglect or dereliction of duty, on the part of any of the said employees, the Chief Justice should have the power to suspend the offender, for a number of days, not exceeding one month, from his duties and his salary or other emolument, subject to an appeal, by the suspended employee, to His Excellency the Governor; and that any such appeal had to be referred to the Chief Justice, for a report, if His Excellency, on perusal of the statement of the case by the appellant himself, should deem it desirable to have that report, before giving his final decision.

That power appeared to Sir Adrian sufficient for the maintenance of order and discipline; and, in extraordinary cases, calling for a longer suspension or dismissal, the Chief Justice's order for suspension had to be without limitation of time, the case being, within three days, reported to His Excellency, to be dealt with as the Governor deemed proper.

On 3rd March 1881, the Chief Secretary to Government replied to the Chief Justice's letter informing the latter that he had laid down before the Governor Sir Adrian Dingli's letter on the subject of the powers of the Chief Justice, and conveyed His Excellency's approval of the suggestions contained in the said letter.

III.2. Sir Arturo Mercieca's interpretation of the provision under study

On 5th March 1936, the then Chief Justice Sir Arturo Mercieca, applied to the Right Honourable the Secretary of State for the Colonies, for the reversal of a decision given on the 5th November 1935 by His Excellency the Officer Administering the Government Sir Harry Luke, and confirmed by H.E. the Governor on the 13th December 1935 in a matter which concerned the powers inherent to the office of Chief Justice.⁵

The facts were as follows. A rumour had reached Sir Arturo on the 26th October 1935 that one of the messengers of the Superior Courts had been promoted to be an usher, in preference to five others senior to him, for the only reason that he could ride a motor-cycle and the others could not. The Chief Justice asked the Registrar whether that was true and, if so, why Sir Arturo had not been informed of this exceptional measure. As the Registrar showed some reluctance to reply and seemed to challenge Sir Arturo's right to have anything to do with the matter, the Chief Justice ordered the Registrar to submit to Sir Arturo a written report on the subject.

5. *Ibid.* Vide also Sir Arturo Mercieca, 'Le Mie Vicende: Note Autobiografiche,' Lux Press, Malta, 1984, p. 264.

On the 5th November 1935 Sir Harry Luke informed the Chief Justice that the Registrar had brought to His Excellency's notice that Sir Arturo had questioned the Registrar's right to communicate direct with the Government before consulting the Chief Justice on the subject of promotions and other administrative matters, and that while it was not proposed to alter the procedure of submitting direct to the Government, for approval or otherwise, questions of promotion or other administrative matters, the Registrar had been instructed to continue as hitherto to consult the Chief Justice and the other Judges whenever it was proposed to make any changes in their personal staff, but only as an act of courtesy, and that the discipline, punishment and promotion of all Government Officers was governed by the appropriate Regulations. On 7th November 1935 Sir Arturo asked the Registrar to state whether the Chief Justice was to have the report the latter had verbally ordered the Registrar to send, to which the Registrar replied that, having applied for instructions from the Government, he was not given the necessary authorisation to submit to Sir Arturo that report.

Against this attitude of the Government towards the Chief Justice, Sir Arturo complained by letter to the Governor of the 21st of that month, requesting that the Registrar be directed to comply with his order; but the Governor, by communication of the 13th December 1935, was unable to accept the Chief Justice's contention that Sir Arturo was entitled to be consulted in administrative matters in the Department of the Registrar, such as the promotion of a Messenger, and that the Governor had confirmed the decision conveyed in Sir Harry Luke's letter of 5th November, 1935. The Governor was also good enough to acquaint the Chief Justice with the particulars of the incident which had given rise to the correspondence, concluding that he did so only as a matter of courtesy.⁶

The grounds on which Sir Arturo based his claim, which had been thus rejected by the Government, were those which he had already submitted to the Governor in his letter of the 21st November 1935.

In the said letter, the Chief Justice argued that he had not questioned in general terms the Registrar's right to communicate direct with the Government before consulting Sir Arturo on the subject of promotions and other administrative matters. The Chief Justice did, however, claim, in virtue of the powers vested in him and in exercise of the duties laid upon him by the law in his capacity of Chief Justice,

6. The Governor explained to the Chief Justice the particular incident which had given rise to the correspondence. According to the Governor, it was essential that the vacancy amongst the Court Ushers had to be filled by a man capable of riding a motor-cycle. In forwarding his recommendations to fill this vacancy, the Registrar, Mr. Edgar Staines, stated that of the five senior messengers one was inefficient and unreliable, one was unwilling to learn to ride a motor-cycle, one considered himself too old to do so, while the remaining two were fit for promotion and willing to learn to ride a motorcycle. Of the last two, however, one made no attempt to attend the Police Depot for instruction in driving a motor-cycle. There was thus only one messenger who was fit for promotion and capable for riding a motorcycle and he was accordingly appointed to fill the vacancy in the grade of Court Usher.

to be acquainted with whatever measure could in any manner affect the general conduct of and maintenance of order and discipline in the Registry of the Superior Courts, and stated that the Chief Justice had considered the promotion of one of the messengers in preference to five others senior to him with regard to which the Chief Justice was entitled to give his opinion before its submission to the Government for approval.

Sir Arturo opined that the powers of the Chief Justice over the Registry derived from article 74 of the Laws of Organization and Civil Procedure, and were authoritatively explained by the framer of those laws, Sir Adrian Dingli, in terms which elicited the approval of the Government.

Sir Adrian Dingli's statement of the law, Sir Arturo Mercieca held, both during Sir Adrian's times and subsequently thereto till the date of writing of Sir Arturo's letter were in force in regard to the status and position of the Chief Justice in the matter of his jurisdiction on the Registry of His Majesty's Superior Courts did not bear out the contention of the Officer Administering the Government's communication dated 5th November 1935, that the Chief Justice was to be consulted only whenever it was proposed to make any change in his personal staff, and this only as an act of courtesy. Sir Arturo held, instead, that the promotion of a messenger to an office which required special qualifications and entailed no mean responsibility, especially when made over the head of his seniors and under circumstances which could cause it to affect order and discipline among the officers concerned, was a measure which came within the sphere in which the Chief Justice was by law entitled to be consulted and required to express his views, without encroachment upon, or prejudice to, the general administrative rights and powers of the authorities responsible for the government of the Island. As regards the Colonial Regulations, Sir Arturo pointed out that these applied to such matters as did not come within the meaning and object of the provisions of the Code, the Office of Chief Justice, and any contrary rule or regulation notwithstanding, enjoined upon the Registrar, who 'has under his direction and responsibility the Registry and the Officers attached to it', to receive his orders from the Chief Justice in all cases not connected with any Court in particular. The Chief Justice observed that the powers which, on the approval of Sir Adrian Dingli's recommendation were recognised or granted by the Government of 1881, and had never been questioned by successive administrators, could, in no doubt, be taken away by the present Government if they so deemed it proper for reasons with which the Chief Justice was not acquainted, but the law itself could not be set aside or altered in any way except by another law.

Sir Arturo's complaint, however, was based on grounds still more serious. Not only was no advice sought from him and no information given to him by the Registrar as regards the extraordinary promotion of a messenger to the detriment of five others senior to him, but, after the promotion was approved, and wishing to offer, if necessary, the Chief Justice's remarks to the Government, for any future recurrence of the matter, Sir Arturo was precluded from obtaining official

information of the actual facts from the only Officer to whom he could turn, the Registrar, because the latter was instructed to disregard the order the Chief Justice had given him to submit a report on the subject. The information was subsequently kindly forwarded to the Chief Justice by the Governor himself in his communication dated 13th December 1935.

Sir Arturo felt that he owed it to the office which he had the honour to hold to uphold the rights and powers entrusted by law and by previous Governments to the Chief Justice, and for this reason he submitted the case to the Secretary of State for the Colonies' enlightened judgment, praying that, in view of the principle involved, an opinion thereon was, if it was deemed necessary or useful, obtained from the Right Honourable the Lord High Chancellor.

III.3. The Officer Administering the Government's construction of the provision under scrutiny

Sir Harry Luke referred Sir Arturo's letter to the Right Honourable J.H. Thomas, M.P., Secretary of State for the Colonies. In his covering letter of referral, Sir Harry informed the Secretary of State that the matter was first brought to his notice in a letter dated 25th October, 1935, from the Registrar of His Majesty's Superior Courts to the Secretary to Government. In paragraph 4 of this letter reference was made to Judicial File 8131/1881 as Sir A. Mercieca to a large extent based his arguments on this correspondence.

The Registrar's letter was referred to the Legal Adviser and to the Treasury Counsel, both of whom expressed the view that executive matters, such as the promotion which had given rise to the correspondence, were not matters within the control of the Chief Justice. They added, however, that as an act of courtesy it was desirable that the Chief Justice and the Judges should be consulted before any change was made in their personal staffs. Sir Harry had replied to the Chief Justice in this sense on the 5th November. On the 21st November the Chief Justice addressed to the Governor, the late Sir David Campbell, a letter which did not contain anything material which had not already been taken into consideration; and the Governor replied to it in his letter No. 1619/35 of 13th December.

Sir Harry observed in his covering letter of referral to the Secretary of State for the Colonies that in his letter of the 5th March the Chief Justice based his claim on two grounds; first, the provision of Article 74 of the Laws of Organization and Civil Procedure and, secondly, the decision on the correspondence in file No. 8131/1881. As regards the former, Sir Harry was advised that as Article 74 referred to 'matters concerning one particular court' or to 'courts generally', its operation was limited to matters which arise out of judicial proceedings and not to questions of a purely executive nature, such as the promotion of a messenger. As regards the second ground, paragraph 6 of the late Sir Adrian Dingli's letter clearly referred to the powers which he desired to have in order to enforce disciplinary measures,

where these were called for. This, he wrote, again raised quite a different issue from Sir Arturo's claim of the Chief Justice in regard to executive matters. He further noted in this connection that so far as could be traced no Chief Justice had ever made use of the disciplinary powers which were granted to Sir Adrian Dingli.

The clerical and messenger staff in the Department of the Registrar of the Superior Courts belonged to the Civil Service generally and, as such, its members were liable to be transferred to any other Department. Sir Harry felt, therefore, that it was of the utmost importance that no discrimination should be made in the status of the members of that Department and that no grounds should be given for suggesting that they were in a privileged position as compared with the members of other Departments. He pointed out that it had always been the practice in Malta to regard the Registrar of the Superior Courts as the Head of a Department and as having the administrative powers vested in other Heads of Departments. His position was admittedly somewhat different from other Heads of Departments in so far that in matters arising out of the judicial work of the Courts he had, of course, to accept orders from the Chief Justice or from the Judges. This, however, did not appear to affect the principle that as the Head of a Department the Registrar in a purely executive question, such as the promotion of a messenger, was responsible directly to Government.

To accept that the Chief Justice, *ex officio*, was in effect the administrative head of the Registrar's Department, Sir Harry opined, would appear to run contrary to the well established principle of keeping separate judicial and executive functions. Sir Harry was convinced that neither the Code nor Sir Adrian Dingli in the correspondence in file No. 8131/1881 ever contemplated such a step.

He concluded his letter to the Secretary of State for the Colonies trusting that the latter would find himself in agreement with the view taken in this matter by the late Sir David Campbell and by Sir Harry himself and that the Secretary of State would be able to uphold the decisions given by the Government.

III.4. The Secretary of State for the Colonies authoritative statement

On 12th May 1936, the Right Honourable J.H. Thomas replied to Sir Harry's confidential despatch forwarding a letter addressed to the Secretary of State by the Chief Justice of Malta upon the question of his status in regard to administrative matters in the Department of the Registry of His Majesty's Superior Courts in the Island.

The Secretary of State requested Sir Harry Luke to inform the Chief Justice that the Secretary of State was advised that neither Article 74 of the Laws of Organization and Civil Procedure, nor the correspondence of 1881, contained anything to support a claim that such matters as the promotion of members of the staff of the Registry of the Superior Courts were within the control of the Chief Justice. He therefore found no ground for modifying the decisions given upon this matter by the late Sir David Campbell and by Sir Harry Luke.

The Secretary of State considered, however, that the Chief Justice should, as a matter of courtesy, be consulted and asked for his views upon any administrative matter of importance relating to the staff of the Registry of the Superior Courts: and requested Sir Harry to intimate to Sir Arturo Mercieca, in giving him the above reply, that this procedure would be adopted in future.

IV. Courts and Tribunals Procedures Act, 2002

Article 28 of the Courts and Tribunals Procedures Act, 2002⁷ has since 30 March 2004 included the provisions of article 57(3) of the Code in article 58(8) thereof which reads as follows:

‘(8) Subject to the provisions of this Code and of any rules made under article 29, the registrar shall take orders from the judicial authorities in relation to any judicial proceedings and in relation to any judicial act, that is to say:

- (a) in the superior courts in matters concerning a particular court, he shall take orders from the judge or from the judges, if there are two or more judges, of that court; in other cases, he shall take orders from the Chief Justice; and
- (b) in the inferior courts, he shall take orders from the magistrates of the particular court.’

I would like to point out that at the moment of writing, article 58(8) of the Code has been brought into force very recently by means of Legal Notice 13 of 2004. The provision (apart from its re-numbering as sub-article (8) of article 58 instead of the current sub-article (3) of article 57) was changed in the sense that no reference is made to the possibility of the Registrar taking orders from the senior magistrate when the Court of Magistrates is composed of more than one magistrate and the matter does not refer to the business of any one Magistrate in particular. However, this is a minor amendment due to the fact that following the amendments made to the Code in 1995 the Gozitan Court of Magistrates does not sit any longer with three magistrates as used to be the position in the past. Hence no changes to the substance of the provision are being made apart from its updating to the post-1995 reality in the composition of the Gozitan Court of Magistrates and the stylistic correction by adding the word ‘he’ before the words ‘shall take orders’ in both paragraphs to make the provision flow better.

V. Reflection on the legislative history of original article 74 of the Code

As can be seen from the history of the original article 74 of the Code as subsequently

7. Act No XXXI of 2002.

re-numbered and amended or substituted, no substantial amendments at all have been made thereto and it is reasonable to state that, notwithstanding the passage of time, the article in question remains very much faithful to the original provision, that is, as it was originally contained in Ordinance IV of 1854 known as the Code of Organization and Civil Procedure. Further, apart from the two cases above-mentioned, article 57(3) of the Code has not attracted any widespread criticism.

VI. Reflections on past experience

The above interpretation given to article 57(3) of the Code of Organization and Civil Procedure suggests that there have been two attempts on the part of two different Chief Justices to involve themselves in administrative matters concerning the Registrar and his/her staff. This is due to the fact that both Chief Justices felt that they should have more control over the Courts' Registry whose task essentially is that to provide a support service to the judiciary in the carrying out of their onerous judicial duties. Nonetheless, the Executive has always been wary of ceding its powers over the Registrar and Court Staff to the judicial organ of the state.

Whilst one understands that it is not the function of the judiciary to be concerned with the administrative running of the Courts, the Executive's role needs to be revisited in order to ensure that it does not in any way use its hold on the Registrar and Court Staff to indirectly interfere in the proper execution of judicial functions. Take a practical example. Suppose one fine day the Registrar of Courts were to be instructed by his or her superiors to transfer all Court Staff performing duties in a particular court so that a court case in which, for instance, the government might be involved as a party cannot be heard or decided. In such an eventuality that court's judge or judges would not be able to hold a sitting without court staff for who will call the case, who will take down the minutes of proceedings, who will execute court summonses, etc.? As access to a court is a fundamental human right⁸ it is imperative that the judiciary, although not interfering in the day-to-day business of the Courts of Justice Division, is enabled to carry out its duties by being provided the requisite support services which are indispensable in the proper administration of justice. Hence the need for the legislator to revisit the provision under study to ensure that certain executive actions will not prevent the citizen from gaining access to a court in terms of law and to ensure that if such abuse were to happen the Courts would be empowered to ensure that they can effectively intervene and, in the interests of the citizens, grant the apposite remedy in the circumstances.

8. The European Court of Human Rights in *Golder v. UK* [A 18 (1975)] has held that article 6(1) of the European Convention on Human Rights and Fundamental Freedoms guarantees the right of access to a court.