

[1999–00 Gib LR 199]

**SCHILLER v. ATTORNEY-GENERAL**

COURT OF APPEAL (Neill, P., Waite and Glidewell, JJ.A.):  
May 28th, 1999

*Civil Procedure—appeals—leave to appeal—no appeal to Privy Council without leave of Court of Appeal or special leave of Judicial Committee even if appeal as of right under Constitution, s.62(1)—under Gibraltar (Appeals to Privy Council) Order 1985, s.4, Court of Appeal to assess whether entitled to appeal under s.62(1) or on merits and if so, give leave conditional on security for costs*

*Legal Aid and Assistance—appeals to Judicial Committee—preparation and conduct of case—by Legal Aid and Assistance Ordinance, s.12 and Schedule, Part II, legal assistance unavailable for appeal to Privy Council—no power in Chief Justice under s.18, or Registrar under Rules to extend legal assistance to cover appeal to court outside Gibraltar*

*Human Rights—fair hearing—legal representation—no enforceable right to publicly-funded legal representation before Privy Council under art. 6 of European Convention on Human Rights*

*Constitutional Law—fundamental rights and freedoms—fair hearing within reasonable time—Constitution, s.8 confers right to fair trial, including (by s.17) trial by Privy Council, but not access to courts at public expense—whether s.8(8) complied with depends on circumstances—no breach if appellant not disadvantaged by lack of publicly-funded legal representation*

The appellant brought proceedings against the Attorney-General in the Supreme Court, alleging false imprisonment, malicious prosecution and failure to protect his constitutional rights.

The Supreme Court dismissed his claims and the Court of Appeal upheld the decision. The appellant applied for leave to appeal to the Privy Council on the ground that his appeal lay as of right under s.62 of the Constitution, and sought an order that he should not be required to give security for the costs of his appeal as a condition of leave.

He submitted that (a) since he was entitled to appeal as of right, he did not require the leave of the Court of Appeal to do so; (b) accordingly, the court had no jurisdiction to order that security for costs be given under s.4(a) of the Gibraltar (Appeals to Privy Council) Order 1985; (c) he was

entitled to legal assistance for the prosecution of his appeal, since either the Registrar could amend his certificate to extend legal assistance to proceedings before the Privy Council under r.18(1) of the Legal Aid and Assistance Rules, or the Chief Justice could make rules under s.18(1) or (3)(c) to prevent an abuse of the Legal Aid and Assistance Ordinance or modify its provisions where a person had ceased to receive legal assistance before the matter was settled; and (d) in any event, the denial of legal assistance would constitute a breach of his right of access to the courts under art. 6 of the European Convention on Human Rights, and breaches of ss. 8(8), 15(1) and 62(1) of the Gibraltar Constitution.

The Crown submitted in reply that (a) the appellant was obliged to apply for leave to appeal to the Privy Council even though his appeal was as of right under s.62(1); (b) the court was obliged under s.4 of the 1985 Order to require security from the appellant for the costs of the appeal; and (c) the appellant had no enforceable rights under art. 6 of the European Convention, and as s.8(8) of the Constitution was concerned with the independence and impartiality of the courts rather than access to them, the absence of provision for legal assistance for appeals to the Privy Council was not a breach of the appellant's constitutional rights.

**Held**, granting leave to appeal:

(1) It was undisputed that under s.62(1)(c) of the Constitution the appellant was entitled to appeal as of right from the decision of the Court of Appeal. However, it was still necessary for him to obtain leave to appeal. Indeed, under the Judicial Committee (General Appellate Jurisdiction) Rules, r.2, no appeal could proceed unless the Court of Appeal or the Judicial Committee itself had given leave. The purpose of the application was to allow the Court of Appeal first to determine that the appeal did indeed fall within the scope of s.62(1) (and if so, it could not refuse leave on the merits of the case) and then to exercise its power to impose conditions under s.4 and, if appropriate, to impose a stay of execution under s.6. Conditional leave would be granted subject to security for costs, and if the appellant wished to proceed with the appeal, final leave would later be granted. In the meantime, the appeal would remain under the court's supervision (paras. 7–12).

(2) Legal assistance was not available for an appeal to the Privy Council, since that court was not among those listed in Part II of the Schedule to the Ordinance in accordance with s.12(2), and s.12(1) stated that the legal assistance provisions related only to courts and tribunals in Gibraltar. It was settled law that the Chief Justice could not extend the scope of legal assistance to courts outside Gibraltar, either under the general power in s.18(1) to make rules to give effect to and prevent abuses of the Ordinance, or under s.18(3). Nor could the Registrar amend the appellant's certificate under r.18(1) of the Rules to extend legal assistance to a court to which the Ordinance did not apply (paras. 15–19).

(3) Although the case-law of the European Court of Human Rights suggested that the absence of provision for legal assistance for certain appeals might well conflict with the right to effective access to the courts under art. 6 of the European Convention, the Convention was not a part of the law of Gibraltar and therefore conferred no enforceable right on the appellant (paras. 21–22).

(4) Nor was the lack of provision in breach of the appellant’s constitutional rights. Under s.8(8) of the Constitution, he was entitled to a fair hearing within a reasonable time by an independent and impartial court. The constitutional provisions on enforcement of rights and rights of appeal did not confer any wider rights on the appellant than he enjoyed under s.8(8). The scope of s.8(8) was not significantly different from that of art. 6 of the Convention. Both provisions related to the same subject matter and, by s.17(1), the reference in s.8(8) to the courts included the Privy Council. However, the failure to provide legal aid did not mean automatically that the appellant was denied the right to a fair trial or effective access to the courts. Much depended on the particular circumstances of the case. Legal assistance would be available to him for the preparation of the record to be sent to the Privy Council and since the appellant had shown himself to be a very able and experienced advocate in the prosecution of his case, the absence of professional assistance would not be a great handicap to him (paras. 25–29).

(5) In any event, it would not assist the appellant at this stage of his appeal for the court to find that his rights under the Convention or the Gibraltar Constitution were infringed. The court would proceed to grant conditional leave on condition that security for costs be given (para. 30).

**Cases cited:**

- (1) *Airey v. Ireland* (1979), Series A No. 32; 2 E.H.R.R. 305, considered.
- (2) *Duyonov, In re*, 1997–98 Gib LR 47, not followed.
- (3) *Lopes v. Valliappa Chettiar*, [1968] A.C. 887; [1968] 2 All E.R. 136, applied.
- (4) *Schiller v. Att.-Gen.*, 1993–94 Gib LR 310; further proceedings, *sub nom. Schiller v. Captain of Port*, 1993–94 Gib LR 340; further proceedings, 1995–96 Gib LR 303.

**Legislation construed:**

Legal Aid and Assistance Ordinance (1984 Edition), s.12(1): The relevant terms of this sub-section are set out at para. 14.

s.12(2): The relevant terms of this sub-section are set out at para. 14.

s.18(1): The relevant terms of this sub-section are set out at para. 16.

(3): “The Chief Justice may also make rules modifying any provisions of this Part so far as appears to the Chief Justice necessary to meet the circumstances where—

...

- (c) a person begins to receive legal assistance after having consulted a solicitor in the ordinary way with respect to the same matter or ceases to receive legal assistance before the matter in question is finally settled . . .”

Legal Aid and Assistance Rules (1984 Edition), r.18(1):

“The Registrar may amend a certificate—

- . . .  
(b) where, in the opinion of the Registrar, it has become desirable either for the certificate to extend to other proceedings, being part of the same action, cause or matter to which the certificate relates . . .”

Gibraltar (Appeals to Privy Council) Order 1985 (S.I. 1985/1199), s.4:

The relevant terms of this section are set out at para. 6

s.5: The relevant terms of this section are set out at para. 6

Gibraltar Constitution Order 1969 (Unnumbered S.I. 1969, p.3602), Annex 1, s.8(8): The relevant terms of this sub-section are set out at para. 24.

s.15(1): “If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.”

(2): “The Supreme Court . . . may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the foregoing provisions of this Chapter . . .”

s.17(1): The relevant terms of this sub-section are set out at para. 28.

s.62(1): The relevant terms of this sub-section are set out at para. 5.

Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 (S.I. 1982/1676), Schedule II, r.2: The relevant terms of this rule are set out at para. 9.

European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, November 4th, 1950; UK Treaty Series 71 (1953), Cmd. 8969), art. 6(1):

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law . . .”

The appellant appeared in person;

*R.R. Rhoda, Attorney-General*, for the Crown.

1 **NEILL, P.:** On March 19th, 1999 the Court of Appeal dismissed an appeal by Mr. David Alexander Schiller from the order of the Chief

Justice dismissing Mr. Schiller's claim against the Attorney-General for Gibraltar. The claim alleged infringements of his rights as a citizen under the Constitution of Gibraltar set out at Annex 1 to the Gibraltar Constitution Order 1969 ("the Constitution"). Mr. Schiller by his action sought redress under s.15(1) of the Constitution. The breaches complained of involved allegations of false imprisonment, malicious prosecution and two instances of failure by the Government to take action necessary to protect Mr. Schiller's rights. The events giving rise to his complaints occurred over a two-year period between September 1985 and October 1987.

2 Mr. Schiller now wishes to appeal from the decision of the Court of Appeal to Her Majesty in Council. By a notice of appeal dated April 6th, 1999, Mr. Schiller gave notice that he would move this court seeking the following relief:

(a) An order that he be granted leave to appeal to the Privy Council on the ground that the appeal lies as of right under the terms of s.62 of the Constitution.

(b) An order that the terms of s.4(a) of the Gibraltar (Appeals to Privy Council) Order 1985 ("the 1985 Order") be deemed to be covered by the legal assistance certificate in force in favour of Mr. Schiller, or such other order "so that the right to appeal to Her Majesty in Council is not stifled."

3 The motion for these orders came on for hearing before the court on Tuesday, May 25th, 1999. At this hearing Mr. Schiller advanced a number of submissions which ranged more widely than the matters raised in the notice of appeal itself, but the nature of his submissions had been sufficiently adumbrated in the clear written arguments lodged by Mr. Schiller before the hearing. I can summarize these submissions as follows:

1. The appeal to the Privy Council in the present case was as of right and no leave to appeal was required. The appellant was entitled to a declaration from the court to this effect.

2. Sections 3 and 4 of the 1985 Order did not apply to this appeal. Accordingly, the Court of Appeal was not required, and indeed had no jurisdiction, to make an order for security for costs under s.4(a) of the 1985 Order.

3. He was entitled to legal assistance before the Privy Council and the court should make a declaration or order to that effect.

4. His entitlement to legal assistance was founded on four separate grounds:

(a) that the Registrar had power under r.18(1) of the Legal Aid and Assistance Rules to extend legal assistance to the proceedings before the Privy Council and that the Registrar should exercise this power;

(b) that the Chief Justice had power under s.18(3)(c) of the Legal Aid and Assistance Ordinance to make rules to modify any provisions of the Ordinance where a person ceased to receive legal assistance before the matter in question was finally settled and that the Chief Justice should exercise this power so as to enable Mr. Schiller to receive legal assistance before the Privy Council;

(c) that if he were denied access to legal assistance, such denial would constitute a breach of his rights under art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(d) that if he were denied legal assistance, such denial would also constitute a breach of his constitutional rights provided for in ss. 8(8), 15(1) and 62(1) of the Constitution.

4 I propose to deal first with the questions which relate to the grant of leave to appeal and to the provision of security for costs.

#### **Leave to appeal and security for costs**

5 It is common ground that Mr. Schiller's appeal from the decision of the Court of Appeal was an appeal as of right. Section 62(1)(c) of the Constitution includes within the class of appeals which lie as of right "Final decisions in proceedings under s.15 of this Constitution." It may well be that, in addition, Mr. Schiller would be able to bring his appeal as of right on the basis that it falls within s.62(1)(b) of the Constitution because the matter in dispute on the appeal "is of the value of £500 or upwards."

6 Basing himself on the fact that his appeal was an appeal as of right, Mr. Schiller argued that s.4 of the 1985 Order had no application to his appeal. The procedure for determining that the appeal lay as of right was, it was submitted, contained in s.5 of the 1985 Order. I should refer to ss. 4 and 5. Section 4 of the 1985 Order is in these terms:

#### **"Conditional leave to appeal**

Leave to appeal to Her Majesty in Council in pursuance of the provisions of this Order shall, in the first instance, be granted by the Court only—

- (a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding ninety days from the date of hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court for the due prosecution of the appeal and the payment of all such

C.A.

SCHILLER V. ATT.-GEN. (Neill, P.)

costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay the costs of the appeal (as the case may be); and

- (b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.”

And s.5, which I did not read *in extenso*, provides for the powers of the single judge and provides that—

“a single judge of the Court [of Appeal] shall have power and jurisdiction—

- (a) to hear and determine any application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court . . .”

And then there are certain other provisions with a proviso that “any order [*etc.*] made or given in pursuance of this section may be varied, discharged or reversed” by the full court. I am unable to accept Mr. Schiller’s argument that s.4 of the 1985 Order does not apply in this case.

7 It is clear that although an unsuccessful party in the Court of Appeal can have an appeal as of right to the Privy Council, it is still necessary for him to apply to the Court of Appeal for leave. On hearing such an application the Court of Appeal must first decide whether or not the appeal lies within s.62(1) of the Constitution so that it is indeed an appeal as of right. Then, if it is, the court has no discretion to refuse him leave on the merits, but has at least two other functions to perform: (a) to exercise its powers under s.4 of the 1985 Order, which provides for the imposition of conditions; and (b) in an appropriate case, to exercise its powers under s.6 of the 1985 Order, which relates to stays of execution in cases where the decision appealed from requires the appellant to pay money or do any act.

8 Authority for this approach is to be found in the decision of the Privy Council in *Lopes v. Valliappa Chettiar* (3). In that case Viscount Dilhorne, who stated the reasons of the Board, explained that the application for leave to appeal was for the purpose of enabling the court to exercise its powers under s.3 of the Federal Ordinance (Federation of Malaya) No. 50 of 1949 (a section comparable to s.6 of the 1985 Order) and that an application was also necessary to enable the court to fix security for the appeal.

9 It is further to be remembered that—

“no appeal [to the Privy Council] shall be admitted unless either—

(a) leave to appeal has been granted by the court appealed from;  
or

(b) in the absence of such leave, special leave to appeal has been granted by Her Majesty in Council.”

(See r.2 of the Judicial Committee (General Appellate Jurisdiction) Rules, set out in Schedule II to the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982).

10 I would also draw attention to the fact that in Civil Appeal No. 22 of 1989, a case in which Mr. Schiller was a party, this court declined to accept Mr. Schiller’s contention that where an appeal was as of right, the application had to be made not to the full court but to a single judge under s.5 of the Order. The Court of Appeal further rejected his argument on that occasion that s.4 had no relevance to a case where an appellant could appeal as of right. The judgment of the Court of Appeal was given by Huggins, J.A. The decision is binding on us, but in any event I have no doubt whatever that it was correct.

11 I should also draw attention to the fact that on April 28th, 1994 Kneller, C.J., acting as an *ex-officio* member of the Court of Appeal, in making an order for security for costs in *Schiller v. Captain of Port* (3), explained (1993–94 Gib LR at 343–344) that although Mr. Schiller’s appeal was an appeal as of right it was necessary for him to obtain the leave of the court. Leave was required even though the Court of Appeal had no discretion to refuse leave on the merits.

12 It is therefore abundantly clear that an appellant, whether he has to seek leave on the merits or can appeal as of right, has to come to the court to obtain conditional leave to appeal. At this first stage, conditional leave is granted under s.4. If the appellant wishes to proceed he will then in due course obtain final leave to appeal from the Court of Appeal and the matter will be transferred to London. As is apparent from the decision of Schofield, C.J. in *Schiller v. Captain of Port* (1995–96 Gib LR 303), the appeal remains under the supervision of the Court of Appeal in Gibraltar until the certified record of the appeal is lodged with the Privy Council.

13 I can turn now to the question of legal assistance.

#### **Legal Assistance in the Privy Council**

14 Legal assistance for civil proceedings is provided for under Part II of the Legal Aid and Assistance Ordinance which came into force on January 1st, 1961. Section 12(1) of the Ordinance provides:

“The provisions of this Part provide for, and relate only to, legal assistance in connection with proceedings before courts and tribunals in Gibraltar not being proceedings in respect of which a certificate may be granted under Part I [*i.e.*, dealing with criminal matters]”.

By s.12(2) it is provided that—

“the proceedings in connection with which legal assistance may be given are any proceedings mentioned in Part I of the Schedule, except proceedings mentioned in Part II of that Schedule.”

15 The proceedings specified in Part I of the Schedule are proceedings in the Supreme Court and the Court of Appeal, but it is common ground that the proceedings in the Privy Council are not included. This is not surprising because s.12(1) refers only to legal assistance “in connection with proceedings before courts and tribunals in Gibraltar.” Nevertheless, it was argued by Mr. Schiller that either the Chief Justice or the Registrar could take some action which would enable him to receive legal assistance before the Privy Council.

16 I will deal first with the position of the Chief Justice. By s.18(1) of the Legal Aid and Assistance Ordinance, the Chief Justice is empowered to “make such rules as appear to him necessary or desirable for giving effect to Part II of the Ordinance or preventing abuses thereof.” Mr. Schiller’s argument was that the general power in s.18 entitles or would entitle the Chief Justice to make a rule which would enable him to have legal assistance in the Privy Council.

17 I am quite unable to accept this argument. It seems to me to be clear that legal assistance under the Legal Aid and Assistance Ordinance is limited to proceedings before courts and tribunals in Gibraltar and that the Chief Justice has no power to extend the scope of legal assistance to courts or tribunals outside Gibraltar.

18 Mr. Schiller also argued that the Registrar had power under r.18(1) of the Legal Aid and Assistance Rules made under ss. 10 and 18 of the Ordinance, to amend a certificate so that it could be extended to the provision of legal assistance for the Privy Council. This argument, too, appears to be without merit. The Registrar cannot have power, by means of some right to amend the certificate, to extend the scope of legal assistance to courts outside Gibraltar to which the Ordinance has no application.

19 It is to be noted that by a ruling in *Schiller v. Att.-Gen.* (3), dated March 31st, 1994, Kneller, C.J., considered a similar argument to that which Mr. Schiller has addressed to this court earlier in the week. The Chief Justice expressed the view on that occasion, with which I agree, that

the Registrar had no power to amend a certificate granted to Mr. Schiller so as to extend it to proceedings before the Privy Council (1993–94 Gib LR at 318). He also expressed the view (*ibid.*) that the Chief Justice could not make a rule under s.18(3) of the Ordinance to insert the Judicial Committee in the list of courts and tribunals in Gibraltar.

20 I come, therefore, to Mr. Schiller’s argument relating to art. 6 of the European Convention.

#### **Article 6 of the European Convention on Human Rights**

21 In support of his argument under this heading Mr. Schiller referred us to the decision of Schofield, C.J. in *In re Duyonov (2)*, in which the applicants sought legal assistance for an appeal to the Privy Council. In particular, Mr. Schiller drew our attention to this passage in the Chief Justice’s judgment (1997–98 Gib LR at 53):

“In the context of the present application, it must be accepted that the procedures before the Privy Council are complicated and do not readily lend themselves to presentation by a litigant who is not legally qualified. Furthermore, in this appeal there are matters of law, as indeed there are in most appeals which reach the Privy Council, which it will be difficult for a layman to present. Following the [European Court of Human Rights decision in *Airey v. Ireland (1)*], I find that in denying the applicants access to legal assistance to present these appeals, the Gibraltar legislation does not conform to the obligations imposed by the Convention.”

22 It is clear that in the *Airey* case, the majority of the court in Strasbourg concluded that the absence of legal assistance denied the litigant “an effective right of access to the courts.” The European Convention is not, however, a part of the law of Gibraltar and, accordingly, the absence of legal assistance in the Privy Council is not a matter which can give rise to any enforceable right by Mr. Schiller in this case.

23 I come, therefore, to Mr. Schiller’s arguments based on the Constitution. I have already made some reference to s.62 of the Constitution and I need not refer to this section again. It is sufficient to say that it is concerned with appeals to the Court of Appeal and to the Privy Council. Mr. Schiller’s argument was to the effect that if he had an effective right of access to the courts it would also involve an effective right of access to the appellate courts, including the Privy Council.

24 I should, however, set out s.8(8) of the Constitution. It is in these terms:

“Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation

shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.”

I have also referred to s.15 of the Constitution, on which Mr. Schiller relies. This section is concerned with the enforcement of the protective provisions set out in the preceding sections of the Constitution.

25 As I see it, the crucial question for determination arises under s.8(8). It is argued by Mr. Schiller that the right under s.8(8), when looked at in conjunction with ss. 15(2) and 62, gives a wider right than that conferred by art. 6 of the Convention. In my view, these initial sections do not add to any significant degree to his main contention under s.8(8).

26 In response to the argument by Mr. Schiller it was argued by the Attorney-General that a distinction could be drawn between “a fair and public hearing within a reasonable time” in art. 6 of the Convention and “a fair hearing within a reasonable time” in s.8(8) of the Constitution. The Convention, it was said, was concerned primarily with the right of access to a court or tribunal. Section 8(8), on the other hand, was concerned primarily with the independence and impartiality of the tribunal or court dealing with the matter, and he invited this court to adopt the approach of the Chief Justice in the *Duyonov* case (2) where the Chief Justice said this (1997–98 Gib LR at 53):

“Whereas art. 6(1) of the Convention concerns itself, *inter alia*, with access of an individual to a fair and public hearing and was rightly so interpreted in the *Airey* case, s.8(8) of the Constitution simply provides that any court or other authority set out to determine legal rights shall be independent and impartial and the parties before it should be given a fair hearing within a reasonable time. Section 8(8) is differently framed from the Convention and does not go so far as art. 6(1) of the Convention by alluding to access to a court.”

27 For my part, I find it difficult to accept the distinction made by the Chief Justice and urged upon us by the Attorney-General. Section 8(8) forms part of Chapter 1 of the Constitution which is concerned with the protection of the fundamental rights and freedoms of the individual. The structure of art. 6(1) of the Convention and the structure of s.8(8) of the Constitution are not the same but it seems to me that both provisions relate to the same subject-matter, *i.e.* the requirement for a fair hearing for the determination of civil rights and obligations before an independent and impartial tribunal.

28 It is, however, still necessary to construe s.8(8) in the context of a hearing before the Privy Council. It is to be noted that by s.17(1) of the Constitution, it is provided that in Chapter 1 unless the context otherwise

requires, the word “‘court’ means any court having jurisdiction in Gibraltar, including Her Majesty in Council . . .” It is also necessary to take note of the qualifications made by the European Court in *Airey’s case* (1). Thus, it was expressly stated that the conclusion reached in her case did not mean that a state had to provide free legal aid for every dispute relating to a civil right. Much may depend on the particular circumstances and an effective right of access to justice may be achieved by other means than the provision of a general scheme for free legal aid.

29 I return to the facts of the present case and to the hearing of Mr. Schiller’s appeal before the Privy Council. I am unable to accept any general proposition that the fact that a litigant may be unable to obtain legal assistance in his own country means that the hearing before the Privy Council will not be fair. It is to be remembered that legal assistance may be available for the preparation of the record but in Mr. Schiller’s case the matter is, in my view, even clearer. He is a skilled and experienced advocate of his own case who has an encyclopaedic knowledge of the facts and has demonstrated a marked ability to present his arguments clearly and coherently. There may be cases where the absence of professional legal assistance would be a serious handicap but I do not consider this to be such a case or Mr. Schiller to be such a litigant. In these circumstances, I am satisfied that Mr. Schiller’s rights under the Constitution are not infringed by the fact that legal assistance under the Gibraltar Legal Aid and Assistance Ordinance is not available to him for a hearing before the Privy Council.

30 I would however add this: It does not seem to me that even if he could establish an action for infringement of s.8(8) of the Constitution or indeed of art. 6(1) of the Convention, this fact would assist Mr. Schiller in the prosecution of his appeal at this stage. I would therefore not make any of the orders sought by Mr. Schiller and I would hear and consider the grant of conditional leave and what conditions should be imposed under s.4(a). I think I ought to hear argument now on the amount of security.

**WAITE** and **GLIDEWELL, J.J.A.** concurred.

*Leave to appeal granted.*

[Security for the costs of the appeal was fixed at £15,000.]