

Tribunal must proceed further in order to decide the preliminary question. At this stage, the jurisdictional issue in so far as it depends on the status of the Balen report has not been decided in favour of the appellant.

6. The Tribunal considers that the decision made by the Commissioner was a decision under section 50(1), since he decided in substance that the BBC, which is a public authority, had not breached the requirements of Part I, on the ground that the information in question was within the derogation. It is understood that the BBC contends for a different analysis.
7. Irrespective of the Tribunal's analysis of the Commissioner's decision, the kernel of the ruling issued on 3 March was in paragraph 12, namely that there should be a preliminary hearing in order for the Tribunal to decide whether the appeal should be dismissed on the preliminary (and, on one view, jurisdictional) ground that the Balen report is held for the purposes of journalism or whether, on the contrary, it is the Tribunal's duty to deal with the appellant's complaint.
8. The BBC has explained that the application and extent of the right of appeal pursuant to section 59 is not free from doubt. The BBC's letter asks for confirmation from the Tribunal that, in the event that the Court finds that the Tribunal's decision in this case cannot be challenged by way of statutory appeal, it would properly be the subject matter of judicial review proceedings. It is not within the role of the Tribunal to give such a confirmation. The extent of the right of appeal and the extent of the right of judicial review are matters for the High Court, and the Tribunal does not seek to trespass on the High Court's jurisdiction. The Tribunal would of course welcome and abide by any guidance that may be given by the High Court in due course, and will co-operate with any procedural guidance that may be issued.
9. Regarding the application for a stay of the Tribunal's proceedings, the Tribunal is not presently persuaded that a stay is appropriate. If the preliminary issue is decided in favour of the BBC, there will be no need for an appeal or judicial review proceedings by the BBC. If the preliminary issue is decided in favour of the appellant, the BBC will be free at that time to take such further proceedings by way of appeal or judicial review as it may then see fit.
10. This Ruling is being sent to the other parties to this appeal and if either or both wish to support the BBC's application for a stay then the Tribunal will reconsider its position, provided the parties do so by 11 am on 20 March by email or fax, otherwise the matter will proceed to a hearing for directions as arranged on 21 March.

Dated 16th March 2006

John Angel.
Chairman