

AS TO THE ADMISSIBILITY OF

Application No. 15404/89  
by Betty PURCELL et al.  
against Ireland

The European Commission of Human Rights sitting in private  
on 16 April 1991, the following members being present:

MM. C.A. NØRGAARD, President

J.A. FROWEIN

S. TRECHSEL

F. ERMACORA

G. JÖRUNDSSON

A.S. GÖZÜBÜYÜK

A. WEITZEL

J.-C. SOYER

H.G. SCHERMERS

Mrs. G. H. THUNE

Sir Basil HALL

Mr. C.L. ROZAKIS

Mrs. J. LIDDY

MM. L. LOUCAIDES

M.P. PELLONPÄÄ

B. MARXER

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the  
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 11 August 1989  
by Betty Purcell and others against Ireland and registered on  
28 August 1989 under file No. 15404/89;

Having regard to:

- the observations submitted by the respondent Government on  
18 May 1990 and the observations in reply submitted by the  
applicants on 31 July 1990;
- the submissions of the parties at the hearing on 16 April 1991;

Having deliberated;

Decides as follows:

THE FACTS

The application is brought by:

- Ms Betty Purcell and sixteen other Irish citizens; they are  
journalists or producers of radio or television programmes, employed  
by Radio Telefis Eireann (RTE) (see complete list in the Annex);

- the National Union of Journalists;

- the Services Industrial Professional Technical Union.

The individual applicants are members of one or other of the  
two aforementioned trade unions.

The applicants are represented in the proceedings before the  
Commission by Anne Neary & Co., solicitors in Dublin.

The facts of the case, as submitted by the parties, may be summarised as follows:

The application concerns alleged restrictions on the applicants' freedom of expression, resulting from a ministerial Order made under Section 31 of the Broadcasting Authority Act 1960 (as amended by Section 16 of the Broadcasting Authority (Amendment) Act 1976).

The relevant provisions of the amended Section 31 of the 1960 Act are as follows:

"(1) Where the Minister is of the opinion that the broadcasting of a particular matter or any matter of a particular class would be likely to promote, or incite to, crime or would tend to undermine the authority of the State, he may by order direct the Authority to refrain from broadcasting the matter or any matter of the particular class, and the Authority shall comply with the order.

(1A) An order under subsection (1) of this section shall remain in force for such period not exceeding twelve months as is specified in the order and the period for which the order is to remain in force may be extended or further extended by an order made by the Minister or by a resolution passed by both Houses of the Oireachtas providing for its extension; provided that the period for which an order under the said subsection (1) is extended or further extended by an order or resolution under this subsection shall not exceed a period of twelve months."

The Section 31 Order in force at the time the application was introduced is S.I. No. 3/1989 which provided that an earlier Order (S.I. No. 13/1987) was to remain in force until 19 January 1990.

Under S.I. No. 3/1989, RTE is directed to refrain from broadcasting any matter which is:

"(1) an interview, or a report of an interview, with a spokesman or with spokesmen for any one or more of the following organisations, namely:

(a) the organisation styling itself the Irish Republican Army (also the IRA and Oglagh ne hEireann);

(b) the organisation styling itself Sinn Fein;

(c) the organisation styling itself Republican Sinn Fein;

(d) the organisation styling itself the Ulster Defence Association;

(e) the organisation styling itself the Irish National Liberation Army (also the INLA);

(f) any organisation which in Northern Ireland is a proscribed organisation for the purposes of section 21 of the Act of the British Parliament entitled the Northern Ireland (Emergency Provisions) Act, 1978.

(2) A broadcast, whether purporting to be a party political broadcast or not, made by, or on behalf of, or advocating, offering or inviting support for, the organisation styling itself Sinn Fein or the organisation

styling itself Republican Sinn Fein.

(3) A broadcast by any person or persons representing, or purporting to represent, the organisation styling itself Sinn Fein or the organisation styling itself Republican Sinn Fein."

In order to comply with the terms of the Section 31 Order, guidelines were issued by the RTE Authority in 1978 and re-issued in 1989. The effect of these guidelines has been summarised by the applicants as follows:

- RTE staff are prohibited from broadcasting any interviews with, or recording of statements uttered by any person whom they know to be a member of one of the organisations listed in the Section 31 Order;
- RTE staff are required to ascertain in appropriate circumstances whether a person is a member of a proscribed organisation within the meaning of the Section 31 Order;
- RTE staff must obtain clearance from the Divisional Head concerned prior to broadcasting any news feature or current/public affairs programmes relating to Northern Ireland;
- the prohibition on publishing any interview statement, comment or otherwise by a member of a listed organisation within the meaning of Section 31 extends to any subject matter, such as nature programmes, education, drugs problems, etc;
- coverage by news programmes or current affairs programmes of meeting or press conferences involving representatives of listed organisations within the meaning of the Section 31 Order must use mute film or stills to illustrate such reportage, and the reading out of any statements or portions of statements by the RTE staff member concerned;
- the guidelines require that in all matters concerning news treatment of listed organisations the Head of News will, where appropriate, consult with the Director-General.
- failure to comply with the guidelines could result in dismissal of the staff member concerned.

Paragraph 4 of the guidelines indicates that in news bulletins factual reportage is not prohibited by the Order and that statements from the listed organisations "on significant developments, including the acceptance or denial of responsibility for violence or other unlawful activity" may be reported. Appropriate use of mute film or stills to illustrate such reportage is permitted but "sound recording or sound-on-film of a spokesman or spokesmen for any one or more of such organisations, or interviews or reports of interviews with such persons, is not permitted."

The organisation Sinn Fein which is referred to in the Section 31 Order is not an unlawful organisation under the Offences Against the State Act 1939. Section 19 of the 1939 Act enables the Government to declare certain organisations unlawful. By Section 21 of the 1939 Act membership of an unlawful organisation is made an offence. The IRA has been declared to be an unlawful organisation under the 1939 Act, but Sinn Fein has not; it is a registered political party under Section 13 of the Electoral Act 1963 which provides for a Register of Political Parties.

The constitutional validity of Section 31 of the 1960 Act in the light of the constitutional guarantee of freedom of expression

(Article 40.6.1.) was considered by the Supreme Court in the case of *The State (Lynch) v. Cooney* (1982) IR 337. This case concerned the validity of that part of a Section 31 Order made by the Minister of Justice on 9 February 1982 which prohibited party political broadcasts by Sinn Fein as well as broadcasts by any persons representing or purporting to represent Sinn Fein (see similar provisions in paras. 2 and 3 of Section 31 Order above).

The relevant part of Article 40.6.1. of the Irish Constitution provides as follows:

"6. 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality:-

i. The right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticisms of Government policy, shall not be used to undermine public order or morality or the authority of the State."

Chief Justice O'Higgins, delivering the judgment of the Supreme Court on 28 July 1982, upheld the validity of Section 31 of the 1960 Act (as amended) in the following terms (p. 361):

"The legislation deals with, amongst other things, the control of freedom of expression and free speech within the powers granted by s. 6, sub-s. 1, of Article 40 of the Constitution. This provision enables the State, in certain instances, to control these rights and freedoms. The basis for any attempt at control must be, according to the Constitution, the overriding consideration of public order and public morality. The constitutional provision in question refers to organs of public opinion and these must be held to include television as well as radio. It places upon the State the obligation to ensure that these organs of public opinion shall not be used to undermine public order or public morality or the authority of the State. It follows that the use of such organs of opinion for the purpose of securing or advocating support for organisations which seek by violence to overthrow the State or its institutions is a use which is prohibited by the Constitution. Therefore, it is clearly the duty of the State to intervene to prevent broadcasts on radio or television which are aimed at such a result or which in any way would be likely to have the effect of promoting or inciting to crime or endangering the authority of the State. These, however, are objective determinations and obviously the fundamental rights of citizens to express freely their convictions and opinions cannot be curtailed or prevented on any irrational or capricious ground. It must be presumed that when the Oireachtas conferred these powers on the Minister it intended that they be exercised only in conformity with the Constitution.

The Court is of the opinion that s. 31, sub-s. 1, of the Act of 1960, as amended, does not confer on the Minister the wide, unfettered and sweeping powers which have been alleged by the prosecutor. The Court is satisfied that the sub-section does not exclude review by the Courts and that any opinion formed by the Minister thereunder must be one which is bona fide held and factually sustainable and not unreasonable. For these reasons the Court has come to the

conclusion that the invalidity alleged to attach to sub-s. 1 of s. 31 has not been established."

The Supreme Court reviewed the evidence adduced by the Minister of Justice which was uncontroverted and which indicated that Sinn Fein was "an integral and dependent part of the apparatus of the Provisional I.R.A., an illegal terrorist organisation which, by both its avowed aims and its record of criminal violence, is shown to be committed to amongst other things the dismantling by violent and unlawful means of the organs of the State ..." (per Mr. Justice Henchy, at p. 381).

The Court considered that this evidence fully justified the Minister's opinion that a broadcast made on behalf of or inviting support for Sinn Fein, or broadcast by a person purporting to represent that organisation, would have been likely to promote or incite to crime or would have tended to undermine the authority of the State. Accordingly, it was held that the Order made by the Minister was not made ultra vires Section 31 (1) of the 1960 Act (as amended).

The individual applicants have submitted affidavits in which they described in detail the effect of the Section 31 Order on their capacity as broadcasters to receive and impart information. In essence they claim that the effect of the Order and guidelines has been gravely to distort coverage of all news events, current affairs and social developments in Northern Ireland, to deter journalists and/or producers from choosing to put on programmes relating to any issue in Northern Ireland and to prevent journalists and producers from complying with the requirement as to balance and impartiality in its programmes produced. The applicants consider that Section 18 of the 1960 Act (as amended) offers a sufficient safeguard against the use of the broadcasting media to undermine the authority of the State. This provision imposes inter alia a duty of impartiality on the RTE Authority but also provides that no matter may be broadcast "which may reasonably be regarded as being likely to promote, or incite to, crime or as tending to undermine the authority of the State."

In their affidavits to the Commission the applicants submit that the professional morale and competence of RTE journalists have been significantly undermined. By way of illustration of the impact of the Order on the role of television journalism they state inter alia as follows:

- the restrictions prevent RTE staff from giving a balanced account of many events as they are happening. During elections campaigns RTE staff are not permitted to interview candidates or broadcast statements or comments by candidates from the listed organisations (i.e. listed in the Section 31 Order) who are running for election. They are also prevented from interviewing members of listed organisations who hold public office, such as Sinn Fein councillors;
- restrictions on coverage of Sinn Fein candidates, notwithstanding that Sinn Fein is a lawful political party in Ireland, mean that journalists could not cover press conferences live but could only read out press statements afterwards. This prevented the applicants from challenging the candidates on their campaign manifesto or covering a question and answer session in which journalists question the organisation or its candidates about their campaign manifesto or objectives. The restrictions have the effect of deterring RTE staff from covering any story which might involve the participation of a member of Sinn Fein whether as a local councillor, local activist in a voluntary body or otherwise;
- the ban on interviewing a member of Sinn Fein or other listed organisation is a blanket ban, irrespective of the news story being covered. As one of many examples, the

applicants cite the coverage by RTE of an incident where a teacher had been dismissed from a convent school where she was teaching because she had become pregnant outside marriage. The teacher had brought proceedings in the High Court, claiming unfair dismissal and RTE could not interview her because she was a member of Sinn Fein. It is claimed that the mere recording of the woman's voice saying "no comment" being broadcast on air resulted in the reporter concerned being reprimanded;

- the restrictions particularly affect RTE staff working in Radio na Gaeltachta which serves the Irish-speaking sector of the country, presenting news, information and a full range of programmes through the medium of the Irish language. One of the applicants details his inability to interview a recent chairman of Galway County Council who is a fluent Irish speaker but also a member of Sinn Fein and the difficulty of mounting programmes on areas such as the state of the roads in the Connemara area. He also refers to the fact that he could not use on his programmes a local solicitor who has a specialist knowledge of Gaeltacht areas because he happens to be a member of Sinn Fein;

- even programmes critical of Sinn Fein are subject to the restrictions under the Section 31 Order. Thus in a television programme reporting on the morality of voting for Sinn Fein it was not possible to interview anybody from Sinn Fein itself to represent their views in a panel discussion;

- the Section 31 Order has never been suspended to enable RTE journalists to cover an election either in Ireland or in Northern Ireland. The Order operated fully during the 1989 combined general election and European elections in Ireland and the European elections in Northern Ireland. It is pointed out that similar broadcasting restrictions imposed by the United Kingdom Home Secretary on 19 October 1988 on the BBC and the IBA were suspended for the duration of the election campaign in Northern Ireland;

- the applicants point to the anomalous consequences of the restriction in that they could not interview Gerry Adams, MP, on a successful election to Westminster but were forced to interview the losing candidate. The British and Worldwide radio and television carried direct interviews with Mr. Adams which further undermined the credibility of RTE.

## COMPLAINTS

### Article 10 of the Convention

The applicants complain under Article 10 of the Convention that the Section 31 Order constitutes an unjustifiable interference with freedom of expression and is a serious infringement of their right in a democratic society to impart information to the public, and of their right to receive information without unnecessary interference by a public authority.

They submit that the wording of the Section 31 Order lacks the requisite precision to be "prescribed by law" within the meaning of Article 10 para. 2 of the Convention. Efforts made by the RTE Authority, by journalists in RTE and by the two trade union applicants to seek clear ministerial guidelines as to the scope of the Order have failed. In the event, the applicants have been compelled to comply with the guidelines issued by the RTE Authority in purported compliance with the Section 31 Order.

The applicants accept that in principle the objectives pursued by Section 31 come within the legitimate aims "in the interests of national security or for the prevention of disorder or crime" under Article 10 para. 2. However, the practical effect of the Section 31 Order has greatly exceeded those aims and has become a blanket ban on the proper and adequate coverage of political, social and current affairs issues related to Northern Ireland. It is also submitted that these legitimate aims are adequately covered by Section 18 (1) of the Broadcasting Authority Act 1960 (as amended) which provides that RTE in complying with its duty of impartiality is prohibited from including in any of its broadcasts "anything which may reasonably be regarded as being likely to promote, or incite to crime as tending to undermine the authority of the State."

The applicants further submit that the restrictions do not correspond to a pressing social need and are disproportionate to the aims pursued. In particular they submit that:

- the Section 31 Order relates to the personality of the interviewee as a possible member of one of the listed organisations rather than to the content of the interview or utterance;
- the Order has deterred RTE journalists from carrying out investigative journalism and from producing programmes covering a wide range of social and current affairs issues in Northern Ireland;
- no attempt has been made by the State to justify the difference in legal regulation of the electronic media and newspapers;
- the Government have never explained why they reject the views of the RTE Authority that the Order is overbroad in scope;
- successive Ministers have refused to explain in Parliament or elsewhere the rationale behind the Section 31 Order and its annual renewal.

#### Article 3 of Protocol No. 1 to the Convention

The applicants complain under Article 3 of Protocol No. 1 that the current Section 31 Order and previous Section 31 Orders enforced during general parliamentary elections and European Parliament elections in Ireland are a serious infringement to the free expression of the opinion of the people and with the ability of the individual applicants as journalists to ensure such free expression.

The individual applicants point out that they are also voters in Irish general elections and European elections and have an additional concern as journalists to ensure the free expression of the people's opinion, as guaranteed by this provision. They state that they do not support Sinn Fein and distinguish their complaint entirely from any possible complaint which that organisation or its members might be in a position to make. They point out, however, that Sinn Fein is registered as a political party in the State and is lawfully entitled to put forward candidates for general elections to the national parliament.

The effect of the Section 31 Order has been that Sinn Fein candidates cannot be interviewed by RTE. Moreover, there can be no direct coverage of press conferences of Sinn Fein, including question and answer sessions by journalists at such press conferences. In addition, current affairs programmes, panel discussions, news bulletins and question and answer programmes all exclude Sinn Fein

participation.

It is also submitted that Article 3 of Protocol No. 1 applies to elections to the European Parliament. The individual applicants complain that the above-mentioned restrictions of the interviewing of Sinn Fein candidates also apply to these elections and that they were required by the Section 31 Order to distort the "conditions which will ensure the free expression of the opinion of the people" in violation of this provision.

Article 14 in conjunction with Article 10 of the Convention and Article 3 of Protocol No. 1

The applicants submit that the Section 31 Order also infringes Article 14 in conjunction with Article 10 insofar as the individual applicants are prohibited from broadcasting interviews with or statements by, members (including elected representatives) of Sinn Fein.

The applicants further complain of a breach of Article 14 in conjunction with Article 3 of Protocol No. 1. They claim that the current Section 31 Order and previous Section 31 Orders discriminate on the grounds of political opinion against candidates and elected representatives of a registered political party in the State, Sinn Fein. They complain that as journalists and producers working in RTE, in contrast with journalists in the print media, the individual applicants are required to enforce this discrimination on the basis of political opinion. They are unable to broadcast any interview with or utterance by a member of Sinn Fein, regardless of the content.

Article 13 of the Convention

The applicants further complain of a breach of Article 13 of the Convention in that they have no effective remedy before a national authority for the infringement of their rights under the Convention. The constitutionality of the relevant legislation, and the power of the Minister to issue and renew a Section 31 Order were upheld by the Supreme Court in the case of *The State (Lynch) v. Cooney* (1982) IR 337. As a consequence the applicants have no effective remedy to challenge the requirement that they comply with the terms of the Section 31 Order and the guidelines issued by the RTE Authority setting out procedures for the full implementation of the Order.

#### PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 11 August 1989 and registered on 28 August 1989.

On 4 December 1989, the Commission decided to communicate the application to the Government pursuant to Rule 42 para. 2 (b) of the Commission's Rules of Procedure (former version) and to invite them to submit written observations on the admissibility and merits.

The Government's observations were submitted on 18 May 1990 after two extensions of the time-limit and the applicants' observations were submitted on 31 July 1990 after one extension of the time-limit.

On 16 April 1991, the Commission held a hearing on the admissibility and merits of the application at which the parties were represented as follows:

For the Government

Ms. Emer Kilcullen, Department of Foreign Affairs, Agent  
Mr. Harold A. Whelehan S.C., Counsel



Mr. J. Gerard Danaher B.L., Counsel  
Ms. Finola Flanagan, Office of the Attorney General, Adviser  
Mr. Thomas Kennington, Department of Tourism, Transport and  
Communications, Adviser

#### For the Applicants

Mr. Frank Clarke S.C., Counsel  
Mr. Kevin Boyle, Counsel  
Miss Mary O'Toole, Counsel  
Miss Anne M. Neary, Solicitor

#### Applicants

Ms. Betty Purcell  
Mr. Seosamh O'Cuaig  
Mr. Alex White  
Mr. James J. Eadie (on behalf of the National Union of Journalists)  
Mr. Patrick Keenan (on behalf of the Services Industrial  
Professional Technical Union)

#### THE LAW

##### The applicants as victims

The Commission has first examined whether the applicants can claim to be "victims" within the meaning of Article 25 para. 1 (Art. 25-1) of the Convention. According to this provision, the Commission "may receive petitions ... from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention ...".

The Government contend that the trade union applicants cannot claim to be victims of the alleged violations as the Section 31 Order is not directed to them and has not been applied to their detriment. They consider their complaints as an "actio popularis" aimed at furthering the trade unions' campaign for the abolition of Section 31 of the 1960 Act. The applicants submit that in a situation where all members of a trade union are affected by a measure which they complain infringes their Convention rights the union itself, as a collective of its members, is directly affected by the measure and becomes a victim within the meaning of Article 25 (Art. 25), particularly where the union concerned has consistently asserted those rights on behalf of its members. At the hearing, the applicants have also advanced the argument that it is not only journalists that are affected by the Section 31 Order but journalism as a profession: as professional associations of their members the trade union applicants represent all journalists in defending freedom of expression and in resisting and challenging censorship.

The Commission cannot espouse that argument. In order to satisfy the conditions of Article 25 (Art. 25), an applicant must be able to demonstrate that he himself has been affected by the alleged breach of the Convention. In the present case, the measure complained of does not affect the rights of the applicant unions themselves: the Section 31 Order does not refer to the exercise of any of their rights. The fact alone that the trade unions consider themselves as guardians of the collective interests of their members does not suffice to make them victims within the meaning of Article 25 (Art. 25) (cf. No. 9900/82, Dec. 4.5.83, D.R. 32 p. 261; No. 9939/82, Dec. 4.7.83, D.R. 34 p. 213; No. 10733/84, Dec. 11.3.85, D.R. 41 p. 211).

It follows that insofar as the application is brought by the two trade unions, it is incompatible *ratione personae* with the

provisions of the Convention and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

The Government also submit that the individual applicants cannot claim to be victims as the Section 31 Order is directed to the RTE Authority and not to them. They argue that the applicants are free to receive and impart any information in their individual and personal capacity. If, as they allege, they are affected by the Order it is only by virtue of their employment by the RTE Authority and its adherence to the terms of the Order; as employees of RTE they are bound by the rules and regulations of that organisation.

The Commission sees no force in this argument. All the individual applicants are full-time broadcasting journalists or producers of radio and television programmes. As employees of RTE they are bound to comply with the Section 31 Order, in accordance with the guidelines issued by their employer. The exercise of their freedom to receive and impart information is directly affected by the terms of the Order, and they face disciplinary action for failure to comply with it.

The 17 individual applicants can therefore claim to be victims of the alleged violations within the meaning of Article 25 para. 1 (Art. 25-1) of the Convention.

#### Exhaustion of domestic remedies

The Government contend that the application fails to satisfy the requirement under Article 26 (Art. 26) of the Convention that "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law". They submit that the individual applicants had a remedy available to them as the Irish courts could review any Order made under Section 31. They refer in this respect to the decision of the Supreme Court in the matter of *The State (Lynch) v. Cooney* (1982) I.R. 337, pointing out that this case concerned the validity of a part of a Section 31 Order - made by the Minister of Justice on 9 February 1982 - which prohibited party political broadcasts by Sinn Fein and had therefore no direct bearing on the issues raised by the applicants: the question whether the Order was an unjustified interference with the right to freedom of expression or the right to vote of any person other than a candidate in an election had not been adjudicated upon. The applicants have therefore not exhausted available domestic remedies in respect of the complaints they raise in their application. Refuting this argument, the applicants point out that in the Lynch case the Supreme Court had unequivocally endorsed the Minister's justification for issuing the Section 31 Order in 1982 and that nothing in the development of the state of affairs in Ireland suggests that the courts would find otherwise if the current Order were to be challenged by way of judicial review, particularly since the applicants do not contest the Minister's good faith in forming the opinion underlying the Order but whether the Minister should be entitled to exercise the powers which he has upon forming that opinion. They argue, therefore, that a renewed challenge would be devoid of any chance of success and constitute futile proceedings.

In the Commission's opinion, the applicants have convincingly established that in view of the Supreme Court's clear decision in the Lynch case, upholding the validity of a Section 31 Order largely identical to the one contested in the present case, a renewed challenge would have offered no prospect of success.

The Commission has consistently held that the rule of exhaustion of domestic remedies requires the use of only those remedies which are capable of providing redress for the complaints submitted (cf. Nos 8805/79 and 8806/79, Dec. 7.5.81, D.R. 24 p. 144 with further references). The complaints of the individual applicants

cannot therefore be rejected in accordance with Article 27 para. 3 (Art. 27-3) of the Convention as being inadmissible under Article 26 (Art. 26).

#### Article 10 (Art. 10) of the Convention

The individual applicants complain that the Section 31 Order as applied to them constitutes an unjustifiable interference with their freedom of expression as it is a serious infringement of their right to receive and to impart information without unnecessary interference by public authority. They invoke Article 10 (Art. 10) of the Convention which provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Government submit that the restriction, if any, on the exercise of the applicants' freedom of expression is marginal and in any case prescribed by law and - in the circumstances pertaining in Ireland with regard to terrorist organisations - necessary for protecting national security, territorial integrity and public safety, and for preventing disorder and crime, thus fully in accordance with the provisions of Article 10 para. 2 (Art. 10-2) of the Convention. In support of their contention, the Government have submitted documentary material on the extent of terrorist violence in Ireland, in Northern Ireland and elsewhere in Europe, the support of Sinn Fein for the activities of the IRA and the involvement of other organisations enumerated in the Section 31 Order.

The Commission notes on the question of interference that, although the Ministerial Order is not addressed to the applicants but to their employer, the RTE, it produces serious effects on the applicants' work as journalists and producers, by virtue of the guidelines issued by their employer which they have to observe: they cannot broadcast interviews, or reports of interviews, with representatives of the listed organisations; they must use mute film or stills to illustrate any reportage relating to any of the listed organisations; they must obtain clearance from their superiors prior to broadcasting any news feature or current affairs programme relating to a matter connected with these organisations. As these prohibitions apply to any statement of a representative of a listed organisation regardless of the subject matter, compliance with the Order entails restrictions and conditions not only on the choice of the material the applicants may broadcast but also on their editorial judgment. Considering the eminent role of journalists in the dissemination of information and considering in particular that the ban applies to interviews with spokesmen of a registered political party (Sinn Fein), the Commission concludes that the Order constitutes an interference with the exercise of the applicants' right under Article 10 para. 1 (Art. 10-1) of the Convention to receive and impart information and ideas.

The question is whether this interference was justified, as the Government maintain, by any of the restrictions which may be

imposed on the exercise of the freedom of expression in accordance with Article 10 para. 2 (Art. 10-2) of the Convention.

To be justified under this provision, the condition or restriction must be "prescribed by law". The European Court of Human Rights has repeatedly emphasised that "foreseeability" is one of the requirements inherent in the phrase "prescribed by law" in Article 10 para. 2 (Art. 10-2). A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen - if need be, with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (Eur. Court H.R., Müller and Others judgment of 24 May 1988, Series A No. 133, p. 20, para. 29 with further references).

According to the applicants, the wording of the Section 31 Order lacks the requisite precision to satisfy this criterion. They submit that the restriction is in such indefinite terms that it curtails a whole range of choices of programmes, choices of persons to be interviewed on programmes, balance in coverage of events and of elections and balance in treatment of the subject matter of programmes. The Government refute this allegation. They maintain that the Order has been formulated with sufficient precision to enable the persons concerned to regulate their conduct, and they point out that the applicants were well aware of the consequences which a breach of the provisions of the Order would entail.

In order to ascertain whether the impugned restrictions were "prescribed by law" - in the sense given to that phrase in the Court's case-law - the Commission has considered it necessary to examine Section 31 of the Broadcasting Authority Act 1960 (as amended by Section 16 of the Broadcasting Authority (Amendment) Act 1976) in conjunction with the Order issued in accordance with that provision. Section 31 alone would indeed give rise to objections as to the requisite precision: it empowers the Minister to direct the authority to refrain from broadcasting certain matters solely on the basis of his "opinion that the broadcasting of a particular matter or any matter of a particular class would be likely to promote, or incite to, crime or would tend to undermine the authority of the State". But the "law" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention includes the Order issued pursuant to Section 31. It is a statutory instrument which must be laid before the two Houses of the Oireachtas (Parliament), and either House has the power to annul the Order (Section 16, Subsection 1B of the Amendment Act). As the Order describes in great detail not only the kind of material to which it applies but also the manner in which such material may be conveyed to listeners and viewers, the applicants cannot claim to be unaware of the scope of application of the restrictions imposed upon them. It follows that these restrictions were "prescribed by law" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

In accordance with the Court's case-law, the Commission has next to examine whether the impugned restrictions had an aim which is legitimate under Article 10 para. 2 (Art. 10-2) and whether they were "necessary in a democratic society" for achieving that aim (cf. Eur. Court H.R., Sunday Times judgment of 26 April 1979, Series A No. 30, p. 29, para. 45).

In examining whether the aim pursued by the Section 31 Order can be said to be legitimate under Article 10 para. 2 (Art. 10-2), the Commission notes that the applicants did not express disagreement with the Government's statements concerning the seriousness of the terrorist threat in Ireland and the involvement of the organisations enumerated in the Section 31 Order, including Sinn Féin, which, although a registered political party, has been qualified as "an integral and dependent part of the apparatus of the Provisional I.R.A., an illegal terrorist organisation which, by both its avowed aims and its record of criminal violence, is shown to be committed to,

amongst other

things, the dismantling by violent and unlawful means of the organs of State established by the Constitution" (Mr. Justice Henchy in the Supreme Court's judgment in the case of *The State (Lynch) v. Cooney* (1982) I.R. 337, at p. 381). In this context, the Commission notes that the impugned Order does not prohibit the reporting of the activities of any of the listed organisations; it only bans live interviews with their spokesmen. It thus prohibits the use of the broadcast media for the purpose of advocating support for organisations which seek to undermine, by violence and other illegal means, the constitutional order and the fundamental rights and freedoms it guarantees. While it is true that Sinn Fein - as opposed to the other organisations enumerated in the Order - is not a proscribed organisation, it is also true that it condones the terrorist activities of one of the listed organisations - which is proscribed - and is closely associated with them, as the Supreme Court has stated in the aforementioned Lynch judgment. The Commission notes that under these circumstances it might well be possible under Irish legislation to declare Sinn Fein an unlawful organisation. That it is not so proscribed, is a matter of policy which is alone for the Irish Government to determine. However, the decision not to declare Sinn Fein an unlawful organisation does not imply an obligation on the Government to grant Sinn Fein unimpeded access to the broadcast media. By allowing, in Article 10 para. 2 (Art. 10-2), certain restrictions on the exercise of the freedom of expression, the Convention recognises the principle that no group or person has the right to pursue activities which aim at the destruction of any of the rights and freedom enshrined in it (cf. Article 17 (Art. 17) of the Convention).

The Commission therefore finds that the impugned restrictions on the applicants' freedom to receive and impart information had a legitimate aim under Article 10 para. 2 (Art. 10-2) of the Convention. It observes in this context that the applicants themselves concede that in principle the objectives of the Section 31 Order would appear to come within the legitimate aims mentioned in Article 10 para. 2 (Art. 10-2) of the Convention, i.e. protecting the interests of national security and preventing disorder and crime.

The Commission has next to examine whether the impugned restrictions were "necessary in a democratic society" for achieving these aims.

The applicants contest that the methods adopted by the Government to achieve those legitimate aims are reasonable and proportionate. They submit that these aims are adequately covered by Section 18 Subsection 1A of the Broadcasting Authority Act 1960 (as amended by Section 3 of the 1976 Act) which precludes the broadcasting of "anything which may reasonably be regarded as being likely to promote, or incite to, crime or as tending to undermine the authority of the State". In their opinion the Government have ignored the role of the professional broadcaster in critically presenting and analysing the views of those who are interviewed. They contend therefore that the restrictions imposed by the Section 31 Order were not "necessary in a democratic society" as required by Article 10 para. 2 (Art. 10-2) of the Convention.

In determining whether a measure complained of is "necessary in a democratic society", the European Court of Human Rights has consistently held that the adjective "necessary" implies the existence of a pressing social need and that the Contracting States have a

certain margin of appreciation in assessing whether such a need exists, but that this goes hand in hand with a European supervision (Eur. Court H.R., *Müller and Others* judgment of 24 May 1988, Series A No. 133, p. 21, para. 32, with further reference). In the present case, it is therefore not the Commission's task to determine whether

other measures would have been more appropriate for achieving the intended purpose, as the applicants maintain, nor to assess the expediency and efficacy of the measures taken by the Minister. In view of the Government's margin of appreciation, the Commission's sole task is to examine whether the reasons underlying the Section 31 Order are relevant and sufficient under Article 10 para. 2 (Art. 10-2) (cf. Eur. Court H.R., Müller and Others judgment, loc. cit.), i.e. whether the Minister had convincing reasons for assuming the existence of a pressing social need for imposing the impugned restrictions on the applicants.

In this connection, the Commission must emphasise, as the Court has done on several occasions (cf. Eur. Court H.R., The Sunday Times judgment of 26 April 1979, Series A No. 30, p. 40, para. 65), that freedom of expression constitutes one of the essential foundations of a democratic society. But it must also emphasise that the exercise of that freedom "carries with it duties and responsibilities" (Article 10 para. 2 (Art. 10-2) of the Convention) and that the defeat of terrorism is a public interest of the first importance in a democratic society. In a situation where politically motivated violence poses a constant threat to the lives and security of the population and where the advocates of this violence seek access to the mass media for publicity purposes, it is particularly difficult to strike a fair balance between the requirements of protecting freedom of information and the imperatives of protecting the State and the public against armed conspiracies seeking to overthrow the democratic order which guarantees this freedom and other human rights.

Called upon to consider whether the Section 31 Order can be said to strike this balance in conformity with the provisions of Article 10 para. 2 (Art. 10-2) of the Convention, the Commission notes that the restrictions resulting from the Order do not refer to the contents of radio and television programmes. As has already been emphasised, their purpose is to ensure that spokesmen of the listed organisations do not use the opportunity of live interviews and other broadcasts for promoting illegal activities which aim at undermining the constitutional order of the State. The restrictions are designed to deny representatives of known terrorist organisations and their political supporters the possibility of using the broadcast media as a platform for advocating their cause, encouraging support for their organisations and conveying the impression of their legitimacy.

The Commission recognises that some of these restrictions, particularly the ban on live interviews with spokesmen of the listed organisations, may cause the applicants inconvenience in the exercise of their professional duties, but it does not, on balance, find that they amount to restrictions on the applicants' right to freedom of expression which are incompatible with the aforementioned requirements under Article 10 para. 2 (Art. 10-2) of the Convention.

In contemporary society radio and television are media of considerable power and influence. Their impact is more immediate than that of the print media, and the possibilities for the broadcaster to correct, qualify, interpret or comment on any statement made on radio or television are limited in comparison with those available to journalists in the press. Live statements could also involve a special risk of coded messages being conveyed, a risk which even conscientious journalists cannot control within the exercise of their professional judgment.

Given the limited scope of the restrictions imposed on the applicants and the overriding interests they were designed to protect, the Commission finds that they can reasonably be considered "necessary in a democratic society" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

It follows that the complaints made by the individual

applicants under Article 10 (Art. 10) are manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

Article 3 of Protocol No. 1 (P1-3) to the Convention

The individual applicants complain that the Section 31 Order, insofar as it applies to broadcasts involving spokesmen for Sinn Fein, a registered political party, and is enforced during Irish general elections and elections to the European Parliament, violates the provisions of Article 3 of Protocol No. 1 (P1-3) to the Convention which read as follows:

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

They submit that they are voters in both elections and as journalists have an additional concern to ensure the free expression of the people's opinion.

Referring to the judgment of the European Court of Human Rights in the Mathieu-Mohin and Clerfayt case (Eur. Court H.R., Mathieu-Mohin and Clerfayt judgment of 2 March 1987, Series A No. 113, p. 24, para. 54), the Government submit that Article 3 of Protocol No. 1 (P1-3) implies the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election, but that the applicants have not been prevented or hindered in the exercise of that right. Furthermore they contend that Article 3 of Protocol No. 1 (P1-3) is not applicable to elections to the European Parliament.

While accepting that the individual applicants as voters may be affected by the ban on broadcasts involving spokesmen for Sinn Fein, the Commission does not find in their submissions any substantiated claim that the principle of equality of treatment in the exercise of their right to vote has been violated to their detriment. The applicants submit that the effect of the Section 31 Order has been that Sinn Fein candidates cannot be interviewed, that there can be no direct coverage of press conferences of Sinn Fein, and that current affairs programmes, panel discussions, news bulletins and question and answer programmes all exclude Sinn Fein participation. These are complaints which concern the applicants' position as broadcast journalists which the Commission has already considered under Article 10 (Art. 10) of the Convention. The guarantee, under Article 3 of Protocol No. 1 (P1-3), of "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" implies - as the Court has stated (cf. its Mathieu-Mohin and Clerfayt judgment, loc. cit.) - the principle of equality of treatment of all citizens in the exercise of their right to vote, but it does not give the citizen a right to demand that all political parties competing in an election be granted radio and television coverage or be granted the same amount of such coverage. The fact that Sinn Fein is a registered political party makes no difference in this respect. The registration of a party in Ireland is a mere administrative formality; its only legal effect is that candidates who are members of a registered party may add that party's name to their own name on the ballot-paper. Registration is not a licence, nor does it imply a recognition of the party or its activities. In any case, since the applicants expressly state that they do not support Sinn Fein, it is difficult to see how they can be disadvantaged as voters by the broadcasting ban concerning Sinn Fein spokesmen.

The applicants also submit that, to be consistent in its endeavour to prohibit Sinn Fein's access to the broadcast media, the Government should have proscribed it as a party. In the Commission's

opinion, this is a question of policy which it is not called upon to consider in the context of its examination of the application under Article 3 of Protocol No. 1 (P1-3).

As the Commission has found that the applicants' complaint with regard to Article 3 of Protocol No. 1 (P1-3) do not disclose any appearance of a violation, it is not necessary to determine whether the European Parliament can be considered as "legislature" within the meaning of this provision (cf. Nos 8364/78, Dec. 8.3.79, D.R. 15 p. 247, 8612/79, Dec. 10.5.87, D.R. 15 p. 259, and 11123/84, Dec. 9.12.87, unpublished).

It follows that the complaints made under Article 3 of Protocol No. 1 (P1-3) are manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

Article 14 in conjunction with Article 10 (Art. 14+10) of the Convention and Article 3 of Protocol No. 1 (P1-3)

The individual applicants complain that the Section 31 Order infringes Article 14 in conjunction with Article 10 (Art. 14+10) insofar as it applies to broadcasts involving Sinn Fein representatives, and in conjunction with Article 3 of Protocol No. 1 (P1-3) insofar as it discriminates on the grounds of political opinion against candidates and elected representatives of Sinn Fein.

The Commission has already found that the applicants' complaints under Article 10 (Art. 10) of the Convention and Article 3 of Protocol No. 1 (P1-3) are manifestly ill-founded, also in respect of the alleged discriminatory application of the Section 31 Order to broadcasts involving Sinn Fein spokesmen.

It follows that the complaints made under Article 14 (Art. 14) in conjunction with these provisions must also be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

Article 13 (Art. 13) of the Convention

The individual applicants further complain under Article 13 (Art. 13) of the Convention that they have no effective remedy before a national authority to challenge the Section 31 Order for violation of their rights under the Convention. Article 13 (Art. 13) provides:

"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 an official capacity."

The Commission first observes that, by complaining about the effects of the Section 31 Order on their Convention rights, the applicants in fact seek to challenge Section 31 of the Broadcasting Authority Act 1960 (as amended). It is in this Act that the Minister is given authority to restrict broadcasting by Order in the way he has done. In this respect, the Commission recalls the case-law of the Convention organs according to which Article 13 (Art. 13) does not go so far as to guarantee a remedy allowing a legislative act as such to be challenged (cf. Eur. Court H.R., *James and Others* judgment of 21 February 1986, Series A No. 98, p. 47, para. 85; Eur. Court H.R., *Lithgow and Others* judgment of 8 July 1986, Series A No. 102, p. 74, para. 206).

Insofar as the complaints relate to the implementation of Section 31 by Ministerial Order, the Commission observes that the applicants themselves refer to the challenge of a previous Section 31 Order which led to a judgment of the Supreme Court (*The State (Lynch) v. Cooney* (1982) I.R. 337). They thus concede that there is a remedy



under Irish law. They submit, however, that in view of the Supreme Court's judgment in the Lynch case, their challenge of the current Section 31 Order would offer no prospect of success.

In considering whether the remedy available under Irish law satisfies the conditions of Article 13 (Art. 13) of the Convention in the present case, the Commission recalls that in the Lynch case the constitutionally guaranteed right to freedom of expression has been considered by the High Court as well as by the Supreme Court. Both courts have thus considered the alleged violation of a right which is also guaranteed by the Convention in Article 10 (Art. 10). The Commission therefore finds that there is a remedy under Irish law which enables the applicants to invoke the alleged violation of their rights under Article 10 (Art. 10) before a national authority. Whether this remedy is likely to succeed depends on the appreciation of the merits of their case by the Irish courts. The fact alone that their claims may be unlikely to succeed does not mean that there is no effective remedy within the meaning of Article 13 (Art. 13) of the Convention.

It follows that the complaint made under Article 13 (Art. 13) must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)

#### ANNEX

##### List of individual applicants

Betty Purcell, resident in Dublin,

Brian O'Connell, resident in Billericay,

Colm Murray, resident in Dublin,

Sean Duignan, resident in Dublin,

Cathal Poirteir, resident in Dublin,

Cathal McCoille, born in 1952 and resident in Dublin,

Noelle O'Reilly, resident in Dublin,

Ronan O'Donoghue, born in 1957 and resident in Dublin,

Michael McCarthy, resident in Dublin,

Helen Shaw, born in 1962 and resident in Dublin,

Marian Finucane, resident in Dublin,

Roisin Boyd, resident in Dublin,

Brendan O'Brien, resident in Bray,

Peter Feeney, resident in Dublin,

Alex White, born in 1958 and resident in Dublin,

Anna Heussaff, resident in Dublin,

Seosamh O'Cuaig, resident in Connemara.