COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF QUINN v. IRELAND

(*Application no. 36887/97*)

JUDGMENT

STRASBOURG

21 December 2000

FINAL

21/03/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Quinn v. Ireland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr M. PELLONPÄÄ, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 March, 11 July and 12 December 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 36887/97) against Ireland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Irish national, Mr Paul Quinn ("the applicant"), on 6 March 1997.

2. The applicant, who had been granted legal aid, was represented by Mr M. Farrell, a lawyer practising in Dublin. The Irish Government ("the Government") were represented successively by their Agents, Ms E. Kilcullen, Mr R. Siev and Dr A. Connolly, all of the Department of Foreign Affairs.

3. The applicant alleged that section 52 of the Offences Against the State Act 1939 constituted a violation of the rights guaranteed by Articles 6, 10 and 13 of the Convention.

4. On 1 July 1998 the Commission decided to communicate to the Government the applicant's complaints under Articles 6 and 10 of the Convention. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Hedigan, the judge elected in respect of Ireland, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Ms Vajić, the judge elected in

respect of Croatia, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

6. By a decision of 21 September 1999, the Court declared admissible the applicant's complaints under Articles 6 and 10 of the Convention.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*) and the parties replied in writing to each other's observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 7 June 1996, at approximately 6.00 a.m., two detective police officers left Limerick city in an unmarked police car escorting a post office van carrying significant sums of money on its way to Adare village, Co. Limerick. When the two vehicles arrived at the post office in Adare, the police car was rammed from behind by a stolen vehicle and immediately surrounded by five heavily armed and masked individuals dressed in paramilitary style uniforms. One of the five opened fire at point blank range on the police officers. One of those officers died instantly and the other was seriously wounded.

9. The police suspected a local unit of the Irish Republican Army (an unlawful paramilitary organisation known as the IRA) and the IRA later claimed responsibility for the murder. It was also suspected by the police that, on the night prior to the attack in Adare, the stolen vehicle together with all firearms and ammunition used in the attempted robbery had been stored in a safe house in Patrickswell, Co. Limerick.

As part of the investigation that followed, a number of persons suspected of being members of the local unit of the IRA were arrested and charged, including the applicant's brother who was charged with conspiracy to commit robbery (in relation to the Adare incident), possession of ammunition and of membership of the IRA. A total of 63 persons were arrested and asked to account for their movements at particular times surrounding the attack, including the remaining members of the applicant's family except his two sisters. All of those persons who were asked to account for their movements did so.

10. On 19 July 1996 at 9.30 a.m. the applicant, who resided in the family home in Patrickswell, Co. Limerick, was arrested under section 30 of the Offences Against the State Act 1939 ("the 1939 Act") on suspicion of being a member of the IRA contrary to section 21 of the 1939 Act.

11. He was questioned on eight occasions during two 24-hour consecutive periods of detention for which provision is made under section 30 of the 1939 Act. While in detention, he saw his solicitor on three occasions: between 11.12 a.m. and 11.36 a.m. on 19 July 1996 prior to his first interview with the police; between 5.54 p.m. and 6.27 p.m. on 19 July 1996 and between 1.28 p.m. and 2.00 p.m. on 20 July 1996. That solicitor did not attend the applicant's interviews with the police.

12. At the beginning of the interviews, the applicant was cautioned that he was not obliged to say anything, but that anything he did say would be taken down in writing and could be given in evidence. Many of the questions put to the applicant related to the attack in Adare and to his alleged membership of the IRA. On several occasions during those interviews he was also requested to account for his movements during certain periods of time on 6 and 7 June 1996 immediately before, during and after the incident in Adare. In being so requested, he was informed by the questioning police officers that a failure to provide this information would constitute an offence under section 52 of the 1939 Act for which the potential penalty was six months' imprisonment. The applicant was also informed, on certain occasions only, that the initial caution given to him did not apply as he was obliged to respond under section 52 of the 1939 Act.

13. The applicant denied any connection with the events in Adare, indicated that he was in London when he heard the news of the murder and otherwise refused to give an account of his movements stating, on one occasion, that he had been advised by his solicitor not to answer questions.

14. On 17 January 1997 he was charged, pursuant to section 52 of the 1939 Act, on three counts of refusing to give an account of his movements. On 15 May 1997 the District Court dismissed one charge, he was convicted on the second charge (a section 52 request made on 21 July 1996) and no ruling was made on the remaining charge. The applicant was sentenced to six months' imprisonment.

15. The applicant appealed against conviction and sentence to the Circuit Court and was released on bail pending the appeal. He appealed on the basis, *inter alia*, of an overlap in the times referred to in the charge which was dismissed and the charge on which he was convicted. In early October 1997 the Circuit Court rejected this part of his appeal. When the Circuit Court sat on 20 January 1998 to hear the applicant's submissions on sentence, he withdrew that portion of the appeal which was then struck out. The applicant was detained immediately to serve his prison sentence and was released on 4 June 1998.

16. In February 1999 the applicant's brother pleaded guilty to the charge of conspiracy to commit robbery and the remaining charges were not proceeded with. Four other men pleaded guilty to the manslaughter of the detective police officer and the wounding of his colleague in Adare, Co. Limerick.

II. RELEVANT DOMESTIC LAW

A. Pertinent Constitutional provisions

17. Article 38(1) of the Irish Constitution provides that no person shall be tried on any criminal charge save in due course of law. By Article 40, the State guarantees liberty for the exercise, subject to public order and morality, of the right of citizens to express freely their convictions and opinions.

B. The Offences Against the State Act 1939

18. The Offences Against the State Act 1939 ("the 1939 Act") is described in its long (explanatory) title as an Act to make provision for actions and conduct calculated to undermine public order and the authority of the State and, for that purpose, to provide for the punishment of persons guilty of offences against the State, and to establish Special Criminal Courts.

19. Section 21 of the 1939 Act makes it an offence to be a member of an unlawful organisation as defined in the Act.

20. Section 30 deals with the arrest and detention of suspected persons and provides that a member of the police can arrest and detain a person whom he suspects of having committed an offence under the 1939 Act or an offence scheduled under Part V of the 1939 Act (the scheduled offences are mainly offences under the firearms and explosive substances' legislation). This power of arrest is a permanent power so that it is not dependent on a section 35 proclamation (see the following paragraph).

21. Section 35 of the 1939 Act provides that Part V of that Act (which establishes the Special Criminal Courts and contains section 52) is to come into force by means of a proclamation by the Government made when the Government is satisfied that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order, and when the Government therefore makes and publishes a proclamation to that effect. The proclamation was made in 1972 and is still in force. Accordingly, section 52 of the 1939 Act has been in force since 1972 to date.

22. By section 36 of the 1939 Act the Government may declare that a particular class or kind of offence is a scheduled offence for the purpose of the 1939 Act and such offences are to be tried by the Special Criminal Courts established under section 38 of the 1939 Act.

23. Section 52 of the 1939 Act reads as follows:

> "1. Whenever a person is detained in custody under the provisions in that behalf contained in Part IV of this Act, any member of the <police> may demand of such

> person, at any time while he is so detained, a full account of such person's movements and actions during any specified period and all information in his possession in relation to the commission or intended commission by another person of any offence under any section or sub-section of this Act or any scheduled offence.
>
> 2. If any person, of whom any such account or information as is mentioned in the foregoing sub-section of this section is demanded under that sub-section by a member of the <police>, fails or refuses to give to such member such account or any such information or gives to such member any account or information which is false or misleading, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to imprisonment for a term not exceeding six months."

24. Under the terms of the Good Friday Peace Agreement of 10 April 1998, the Government committed to initiating a wide ranging review of, *inter alia*, the 1939 Act with a view to reform and dispensing with those elements of the 1939 Act which would no longer be required. The Minister for Justice, Equality and Law reform has, with Government approval, established a committee to examine all aspects of the Offences Against the State Acts and to report to the Minister with recommendations for reform. The Committee has commenced its work.

C. Relevant case-law

25. In the case of *the People (Director of Public Prosecutions) v. McGowan* (*1979 IR 45*) the accused had been arrested under section 30 of the 1939 Act and had made certain statements to the police. The defence argued that because of the basis of his arrest (section 30), the existence of section 52 of the 1939 Act and even though no section 52 requests had actually been made, the accused was bound under penalty to give an account of his movements. Accordingly, the statements which had been made by him were involuntary and not therefore admissible. The Court did not find this argument persuasive since no section 52 requests had in fact been made. It went to point out that, even if section 52 had been invoked by the police, the defence submission was not well-founded because of previous Irish case-law which had held that statements obtained in accordance with Irish law, even a law which made it a criminal offence to refuse to answer, were not inadmissible in any legal proceedings.

26. The Garda Siochana (police) Handbook contains relevant legislation and commentaries and is published by the Incorporated Law Society of Ireland in association with the Garda Siochana. The commentary on section 52 of the 1939 Act in the sixth edition (1991) provides as follows:

> "The fact that the accused is bound under threat of penalty to answer questions lawfully put under section 52 does not render the resultant answers or statements inadmissible in evidence"

The judicial authority for that proposition was noted in the handbook as being found in the above-cited *McGowan* case and the earlier Irish case-law approved in the *McGowan* case.

27. In the case of *Anthony Heaney and William McGuinness v. Ireland and the Attorney General ([1994] 2 ILRM*), two individuals had been sentenced to six months' imprisonment pursuant to section 52 of the 1939 Act for failing to give an account of their movements. The High Court rejected their challenge to the constitutionality of section 52, considering that section 52 constituted a proportionate interference with those persons' right to silence guaranteed by Article 38 of the Constitution: the objective was to assist police investigations into serious crimes of a subversive nature involving the security of the State; the restrictions were not considered arbitrary or irrational; and other legal protections were available to persons in custody under section 30 of the 1939 Act which minimised the risk of an accused wrongfully confessing to a crime and safeguarded against the possible abuse of the powers provided by section 52 of the 1939 Act.

Those protections were listed by the High Court: the requirement that a police officer must have a *bona fide* suspicion prior to arrest; the obligatory informing of the suspect of the offences under the 1939 Act and/or of the scheduled offences of which he is suspected; the right to legal assistance when reasonably requested; the right to medical assistance; the right of access to court; the right to remain silent and to be told of that right; the obligations to provide appropriate cautions to detainees and to abstain from cross-examining a person in detention under section 30 of the 1939 Act and from unfair and oppressive questioning of such detainees; and the conditions attaching to any extension of the length of detention under section 30 of the 1939 Act.

The Supreme Court rejected the appeal (*Anthony Heaney and William McGuinness v. Ireland and the Attorney General [1996] IR 580*). It noted that section 52 of the 1939 Act was silent on the question of the later use of statements made pursuant to requests of the police under that section. While it noted that the Court of Criminal Appeal had suggested in the above-cited *McGowan* case that information lawfully obtained under Section 52 might be later used in evidence, the Supreme Court expressly reserved its position as to whether that view was correct or not.

The Supreme Court pointed out that the right to silence was a corollary to the freedom of expression guaranteed by Article 40 of the Constitution. The relevant assessment was, therefore, to consider the proportionality of the restriction on the right to silence in view of the public order exception to Article 40 of the Constitution. It noted that the 1939 Act was aimed at actions and conduct calculated to undermine public order and the authority of the State and that the proclamation made under section 35 of the 1939 Act remained in force.

As to whether section 52 restricted the right to silence more than was necessary in light of the disorder against which the State was attempting to protect the public, the court noted that an innocent person had nothing to fear from giving an account of his or her movements even though such a person may wish, nevertheless, to take a stand on grounds of principle and to assert his or her constitutional rights. However, it considered that the entitlement of citizens to take such a stand must yield to the right of the State to protect itself. The entitlement of those, with something relevant to disclose concerning the commission of a crime, to remain silent must be regarded as of an even lesser order.

28. In the case of *National Irish Bank Ltd* (*In the matter of National Irish Bank Ltd and the Companies Act 1990, 1999 1 ILRM 321, at 343*) the Supreme Court found that a confession of a bank official obtained by Inspectors as a result of the exercise by them of their powers under Section 10 of the Companies Act 1990 would not, in general, be admissible at a subsequent criminal trial of that official unless, in any particular case, the trial judge was satisfied that the confession was voluntary. The Supreme Court considered that compelling a person to confess and then convicting that person on the basis of the compelled confession would be contrary to Article 38 of the Constitution. That court also found that any other evidence obtained as a result of information provided under section 52 of the 1939 Act would be admitted in evidence in a subsequent trial if the trial judge considered, in all the circumstances, that it would be just and fair to admit it.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION

29. The applicant complained that section 52 of the 1939 Act violated his rights to silence, against self-incrimination and to be presumed innocent guaranteed by Article 6 §§ 1 and 2 of the Convention. Article 6, in so far as is relevant, reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. The parties' submissions

1. The Government's submissions

30. The Government submitted, in the first place, that the applicant's complaints fell outside the scope of Article 6 §§ 1 and 2 of the Convention. He had, for reasons outlined by the Government, a fair trial in respect of his conviction under section 52 of the 1939 Act. Since Article 6 provides protection of a procedural nature for the determination of a criminal charge, the applicant could not rely on Article 6 to challenge the offence under section 52 itself. In addition, no proceedings were taken against him on charges of membership of an illegal organisation so that he could not, in that respect, complain of a violation of the procedural guarantees of Article 6 of the Convention. The Government also disputed that the applicant could be considered to have been "charged" within the meaning of Article 6 as interpreted by the Serves judgment: the applicant had assumed wrongly that, when he was questioned under section 52, a case existed against him which the police sought to prove as in the Serves case. When questions were put to the present applicant under section 52, no decision had been taken to charge him with any particular crime.

31. Secondly, the Government pointed to substantial safeguards which exist in order to minimise the risk that an individual may wrongfully confess to a crime, which safeguards were listed by the High Court in the above-cited *Heaney and McGuinness* case (see paragraph 27 above).

32. Thirdly, the Government maintained that section 52 of the 1939 Act was a reasonable and appropriate measure given that that section did not provide for, or allow the use, in subsequent criminal proceedings against an accused of information obtained involuntarily from that person.

If there had been cases where information obtained pursuant to section 52 had been later introduced in evidence against the accused, the Government could not find any such case. They pointed out that the statement of the Court of Criminal Appeal in the above-cited *McGowan* case on which the applicant relied was *obiter dictum* since no section 52 requests had been made in that case. In any event, the matter had been clarified for the future by the Supreme Court in its judgment in the above-cited *National Irish Bank Ltd* case of January 1999. That court found that compelling a person to confess and then convicting him on the basis of the compelled confession would be contrary to Article 38 of the Constitution. It also found that any other evidence obtained as a result of section 52 statements would be admitted in evidence in a subsequent trial only if the trial judge considered, in all the circumstances, that it would be just and fair to admit it.

33. Fourthly, the Government also considered that section 52 of the 1939 Act was a proportionate response given the security situation

pertaining in the Irish State relating to Northern Ireland and the consequent concerns to ensure the effective administration of justice and to preserve public peace and order.

The Government maintained that, as it is legitimate to impose sanctions in civil matters (such as, for example, taxation matters) when a citizen does not divulge information, the power to obtain information under threat of sanction is all the more necessary in criminal matters where the information sought could be essential for the investigation of serious and subversive crime. The Government recalled that the arrest of the applicant took place in the context of police enquiries consequent on the serious attack in Adare which had been established as having been carried out by an IRA unit.

The Government emphasised that section 52 of the 1939 Act remained in force only as long as a proclamation under section 35 of the 1939 Act was in force. As such, section 52 was a part of Irish law only as long as it was considered warranted by a subsisting terrorist and security threat. The Government summarised the duration and level of violence to the date of their observations and detailed recent bombings and other atrocities, referred to a public statement in December 1999 of the Continuity IRA (who are committed to continuing an armed campaign) and outlined recent weapons, explosives and vehicle bomb seizures. Consequently, they considered that the maintenance of the section 35 proclamation continued to be necessary. This necessity had been constantly reviewed, most recently in March 1998, when it was decided to maintain the proclamation in force, the Government noting, in this context, that the single worst atrocity of the entire period of the proclamation occurred in August 1998 when 29 persons lost their lives in a bombing in Omagh. The Government also referred to their commitment as regards the Offences Against the State Acts in the Good Friday Peace Agreement of 10 April 1998.

Moreover, the use of section 52 of the 1939 was strictly limited to arrests and detention under section 30 of the 1939 Act and the circumstances in which section 30 of the 1939 Act came into play were, in turn, strictly limited. The domestic courts were, in addition, vigilant in ensuring that the arrest powers under section 30 were not abused or used for improper purposes *(The People (D.P.P.) v. Quilligan and O'Reilly 1986 IR 495 and The State (Trimbole) v. the Governor of Mountjoy Prison 1985 IR 550*).

34. Finally, the Government distinguished the Saunders v. the United Kingdom judgment (of 17 December 1996*, Reports of Judgments and Decisions* 1996-VI, no. 24) on the basis that the Court condemned the use at trial of evidence obtained from the accused under compulsion but not the means by which that evidence was initially obtained. They also distinguished the Funke v. France judgment (25 February 1993, Series A no. 256-A), pointing out that Mr Funke was subjected to a continuing sanction as long as he refused to provide the requested information. The John Murray v. the United Kingdom judgment (8 February 1996, *Reports*

1996-I no. 1) was also distinguished, the Government emphasising that Mr Murray's case related to the subsequent drawing of negative inferences from that applicant's silence during questioning whereas proceedings had never been taken against the present applicant. The Government considered the Serves v. France case (judgment of 20 October 1997, *Reports* 1997-VI, no. 53) to be similar to the present case but, nevertheless, also distinguishable in that Mr Serves' objection was premature because he refused to take the oath as a witness rather than being compelled to respond to questions.

2. The applicant's submissions

35. The applicant, citing the above-cited John Murray, Funke, Serves and Saunders' judgments, argued that Article 6 applied to his complaints because, once he was arrested and questioned, he was "charged" within the autonomous meaning of that term in Article 6. Moreover, and while he was not complaining about the procedural fairness of the proceedings by which he was sentenced to six months' imprisonment, his rights to silence, against self-incrimination and to be presumed innocent guaranteed by Article 6 §§ 1 and 2 of the Convention were violated by his being obliged to spend time in prison for maintaining his defence rights once he had been so "charged" within the meaning of Article 6. If he was excluded from relying on the relevant Article 6 rights because he had not been "charged" under Irish law or because he was not subsequently proceeded against on those "charges", the relevant guarantees of Article 6 would be rendered ineffective.

36. As to the Government's suggestion that any statements made by the applicant pursuant to the section 52 requests would not have been later admissible in evidence against him, the applicant argued that the judicial statements that existed prior to the *National Irish Bank Ltd* case indicated that such statements would be admissible. He referred, in particular, to the above-cited Court of Criminal Appeal case of *McGowan* as one of the most authoritative statements on the point when, in July 1996, he was arrested and questioned. He further referred to the comments of the Supreme Court in the above-cited *Heaney and McGuinness* case on the *McGowan* case (also cited above). The applicant also pointed to the sixth edition (1991) of the Garda Siochana Handbook which accepted that such statements were admissible in evidence against their authors.

In addition, it was standard practice that police notes of interviews of persons detained under section 30 of the 1939 Act were tendered in evidence when such persons were charged and tried, which notes routinely included responses to section 52 requests for information. Indeed, he noted that during his many interviews with the police, the numerous section 52 requests were intermingled with 'normal' questioning so that it was impossible to know where the section 52 questioning began and ended.

However, the applicant accepted that the *National Irish Bank Ltd* case ruled out the use of section 52 statements in the future unless they were shown to be voluntary. However, that case did allow the admission of evidence obtained as a result or in consequence of section 52 statements obtained.

37. The applicant further considered that the Government had overstated the threat to national security at the time of his arrest. He underlined the fact that the section 35 proclamation had been in force since 1972 and, accordingly, had become a quasi-permanent part of Irish law. Nevertheless, there had been a steady decline in the pattern and level of violence since the early 1990s and he cited, *inter alia*, statistics taken from a report of Ireland under the International Covenant on Civil and Political Rights (1992-6).

He further pointed out that there was no provision for regular independent reviews of the necessity for the continuance of the section 35 proclamation and that no such review had ever been carried out. The recently established review body to which the Government referred was the first ever independent review of the Offences Against the State Acts but the Government had given no indication as to when it would complete its work.

38. Finally, and although no violation was found in the Serves case, the applicant considered that there had been a violation in his case: questions were put to him whereas the Court found that Mr Serves' refusal to take the oath, before he had been questioned, was premature; the applicant was arrested for questioning by the police about his involvement in suspected offences; and he was imprisoned, as opposed to fined, for failing to answer questions. As to the Government's submission that the above-cited John Murray case implied that the right to silence could be restricted in response to national security threats, the applicant argued that inferences could be drawn in that case "in situations which clearly called for an explanation" from the individual in question: there were no circumstances which called for explanation in his case. In fact, the Court stated in the John Murray case that it was incompatible with Article 6 to base a conviction solely or mainly on an accused's silence whereas that was precisely what happened to him.

B. The Court's assessment

1. Applicability of Article 6 §§ 1 and 2 of the Convention

39. The Government argued that Article 6 could not apply to the applicant's complaints because he had not been charged when the section 52 requests were put to him, because no proceedings issued against him on charges of membership of the IRA and because he had a fair hearing on the charge under section 52 of the 1939 Act. The applicant considered that he had been "charged" within the meaning of that term in Article 6 of the Convention and that he was entitled to rely on Article 6 § 1 because he was

convicted of a criminal offence and sentenced to imprisonment for having defended his defence rights guaranteed by Article 6.

40. The Court recalls its established case-law to the effect that, although not specifically mentioned in Article 6 of the Convention, the right to silence and the right not to incriminate oneself are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6.

Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right in question is closely linked to the presumption of innocence contained in Article 6 § 2 of the Convention (the above-cited Saunders judgment, § 68).

The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. The Court would note, in this context, that the present case does not concern a request, through the use of compulsory powers, of material which had an existence independent of the will of the applicants such as, documents or blood samples (also the above-cited Saunders judgment, § 69).

41. The Court observes that the applicant complained under Article 6 of the Convention about having been punished through the application of section 52 of the 1939 Act, for having invoked his rights to silence, against self-incrimination and to be presumed innocent during police questioning in the course of a serious criminal investigation. It recalls that the autonomous meaning of the expression "charge" in Article 6 § 1 of the Convention means that a person can be considered to have been "charged" for the purposes of that Article when that individual's situation has been "substantially affected" (the above-cited Serves judgment, § 42).

42. While the present applicant had not been formally charged under domestic law on 19-21 October 1996 when the requests under section 52 of the 1939 Act were made, the Court considers that he was, at that point, "substantially affected" in the above sense, and therefore "charged" for the purposes of Article 6 § 1, with membership of the IRA contrary to the 1939 Act and with some involvement in the attack in Adare on 7 June 1996.

The Government themselves pointed out that the arrest of the applicant took place in the context of police enquiries consequent on the serious attack in Adare which had been established as having been carried out by the IRA. The applicant was expressly arrested and detained under Section 30 of the 1939 Act on suspicion of being a member of the IRA. Having been questioned by the police for 24 hours, it was considered necessary to extend his detention for a further 24 hours during which he was further

questioned. Numerous questions were put to him about the Adare incident, the investigation of which had led to the arrest and questioning of most of his family and to his brother being formally charged with offences arising out of that incident. The section 52 requests related to his movements immediately before, during and after the time of the attack in Adare. Many other questions related to his alleged membership of the IRA.

43. However, it is true that, while the applicant may have been so "charged" within the meaning of Article 6 when the section 52 requests were put to him, no criminal proceedings as regards those charges were pursued against him ("substantive proceedings"). It is also true that, in general, an individual in that position could not claim to have been a victim of a violation of the procedural guarantees of Article 6 of the Convention.

44. Nevertheless, the Court notes that this latter principle has been refined in certain circumstances.

Article 6 § 2 has already been applied, and violations of that provision found, in the Minelli and Sekanina cases (Minelli v. Switzerland judgment of 25 March 1983, Series A no. 62, and Sekanina v. Austria judgment of 25 August 1993 Series A no. 266-A), even though the relevant national courts concerned had, in the former case, closed the proceedings because the limitation period had expired and had, in the latter case, acquitted the applicant. The Court has also found Article 6 § 2 to be applicable in respect of the public comments of police officers suggestive of an accused's guilt of charges even though the proceedings on those charges were subsequently discontinued (Allenet de Ribemont v. France judgment of 10 February 1995, Series A no. 308, §§ 32-37). Moreover, while Mr Funke was convicted for not supplying information to the customs' authorities, the criminal proceedings initially considered by those authorities as regards his financial dealings with other countries were never actually initiated against him (see the above-cited Funke judgment).

45. In the above-cited Allenet de Ribemont case, the Court explained this refinement, pointing out that the Convention, including Article 6 § 2, must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory (§ 35 of that judgment). Applying this approach to the present case, the Court notes that, if the applicant is unable to invoke Article 6, the lack of substantive proceedings against him would exclude any consideration under Article 6 of his complaint that he had been, nevertheless, already punished during earlier the criminal investigation for having defended what he considered to be his rights guaranteed by Article 6 of the Convention.

46. In such circumstances, the Court finds that the applicant can invoke Article 6 §§ 1 and 2 in respect of his conviction and imprisonment pursuant to section 52 of the 1939 Act.

2. Compliance with Article 6 §§ 1 and 2 of the Convention

47. The Court accepts that the right to silence and not to incriminate oneself guaranteed by Article 6 § 1 are not absolute rights (the above-cited John Murray judgment, § 47).

48. However, it is also recalled that Mr Funke's criminal conviction for refusing to provide information requested by customs' authorities was considered to amount to a violation of Article 6 § 1. In that case, the Court noted that the customs' authorities had secured Mr Funke's conviction in order to obtain certain documents which they believed existed, although they were not certain of the fact. Being unable or unwilling to procure them by some other means, the Court found that the customs' authorities attempted to compel Mr Funke himself to provide the evidence of offences he had allegedly committed. The special features of customs law were found insufficient by the Court to justify such an infringement of the right of anyone charged with a criminal offence, within the autonomous meaning of that expression in Article 6, to remain silent and not to contribute to incriminating himself (the above-cited Funke judgment, § 44).

In the John Murray judgment, the Court described the Funke case, pointing out that the "degree of compulsion" which had been applied through the initiation of criminal proceedings against Mr Funke was found to have been incompatible with Article 6 because "in effect, it destroyed the very essence of the privilege against self-incrimination" (the above-cited John Murray judgment, § 49)

49. The Government distinguished the Funke case from the present application on the basis of the sanctions imposed. The Court does not find this argument persuasive. The nature of the sanction inflicted on Mr Funke (accumulating fines) may have been different from that imposed in the present case (a single prison sentence). However, both cases concerned the threat and imposition of a criminal sanction because the applicants failed to supply information to authorities investigating the suspected commission of criminal offences by them.

50. However, the Government pointed out that section 52 of the 1939 Act should be considered against the background of the numerous protections available to persons in the applicant's position.

51. The Court notes that the High Court in the above-cited *Heaney and McGuinness* case (see paragraph 27 above) considered that such protections minimised the risk of an accused wrongfully confessing to a crime and safeguarded against the possible abuse of the powers provided by section 52 of the 1939 Act. Important as they are, the Court is, however, of the view that such protections could only be relevant to the present complaints if they could effectively and sufficiently reduce the degree of compulsion imposed by section 52 of the 1939 Act to the extent that the essence of the rights at issue would not be impaired by that domestic provision. However, it is considered that the protections referred to by the Government could not

have had this effect. The application of section 52 of the 1939 Act in an entirely lawful manner and in circumstances which conformed with all of the safeguards referred to above, could not alter the choice presented by section 52 of the 1939 Act: either the information requested was provided by the applicant or he faced potentially six months' imprisonment.

52. The Government also maintained that section 52 of the 1939 Act was a reasonable measure given that a statement made pursuant to that section was not later admissible in evidence against its author and because any evidence obtained as a result of such a statement could only be admitted if the trial judge considered it fair and equitable to do so.

The applicants essentially considered that the judicial statements made prior to the above-cited *National Irish Bank Ltd* judgment of January 1999 indicated that such section 52 statements could be later admitted in evidence against their author. While the latter case may have clarified this question, it did not do so until January 1999 and, in any event, that case also indicated that evidence obtained as a result or consequence of section 52 statements could be introduced in evidence against the authors of those statements. Moreover, the applicant pointed to the conflicting cautions given to him many times during his numerous interviews on 19-21 July 1996.

53. The Court considers that the legal position as regards the admission into evidence of section 52 statements was particularly uncertain in July 1996 when the applicant was questioned. It notes that the text of section 52 of the 1939 Act is silent on this point. It observes that the Government did not refer to any domestic case-law prior to July 1996 which would have authoritatively excluded the later admission into evidence against the applicant of any statements made by him pursuant to those requests. Nor did the Government exclude the possibility that, prior to July 1996, statements made pursuant to section 52 had, in fact, been admitted in evidence against accused persons. The Government's position was rather that, in any event, the situation had been clarified for the future by the January 1999 judgment in the *National Irish Bank Ltd* case. This uncertainty about the domestic legal position in July 1996 is underlined by the comments of the Supreme Court in the *Heaney and McGuinness* case on the Court of Criminal Appeal judgment in the earlier *McGowan* case, the Supreme Court delivering its judgment in the *Heaney and McGuinness* case only days after the present applicant was released from custody in July 1996 (see paragraphs 25-27 above).

In any event, the applicant was provided with conflicting information in this respect by the questioning police officers on numerous occasions on 19-21 October 1996. At the beginning of each interview, the applicant was informed that he had the right to remain silent. Nevertheless, when the section 52 requests were then made during those interviews, he was effectively informed that, if he did not account for his movements at particular times, he risked six months' imprisonment. The only reference

during those interviews to the possible use of statements made by the applicant in any later proceedings was to inform him that anything he did say would be written down and might be used against him. The fact that the applicant was also informed only on certain occasions that the earlier caution ceased to apply once a section 52 request had been made, could not have clarified matters. Moreover, the Court observes, from the police notes of the interviews, that it would have been difficult to discern during those interviews to which questions precisely the section 52 requests related.

54. The presence of the applicant's solicitor could not, in such circumstances, have sufficiently remedied the situation. Apart from the fact that that solicitor did not attend the applicant's interviews with the police, the position remained that the applicant had to choose between, on the one hand, remaining silent, a criminal conviction and potentially a six-month prison sentence and, on the other, forfeiting his right to remain silent and providing information to police officers investigating serious offences at a time when the applicant was considered to have been "charged" with those offences and when it was unclear whether, in domestic law, any section 52 statements made by him would have been later admissible or not in evidence against him.

55. Given this uncertainty, the position in July 1996 as regards the later admission into evidence of section 52 statements could not have, in the Court's view, contributed to restoring the essence of the present applicant's rights to silence and against self-incrimination guaranteed by Article 6 of the Convention.

The Court is not, therefore, called upon in the present case to consider the impact on the rights to silence or against self-incrimination of the direct or indirect use made in later proceedings against an accused of statements made pursuant to section 52 of the 1939 Act.

56. Accordingly, the Court finds that the "degree of compulsion", imposed on the applicant by the application of section 52 of the 1939 Act with a view to compelling him to provide information relating to charges against him under that Act, in effect, destroyed the very essence of his privilege against self-incrimination and his right to remain silent.

57. The Government contended that section 52 of the 1939 Act is, nevertheless, a proportionate response to the subsisting terrorist and security threat given the need to ensure the proper administration of justice and the maintenance of public order and peace.

58. The Court has taken judicial notice of the security and public order concerns detailed by the Government.

However, it recalls that in the Saunders case (at § 74) the Court found that the argument of the United Kingdom Government that the complexity of corporate fraud and the vital public interest in the investigation of such fraud and the punishment of those responsible could not justify such a marked departure in that case from one of the basic principles of a fair

procedure. It considered that the general requirements of fairness contained in Article 6, including the right not to incriminate oneself, "apply to criminal proceedings in respect of all types of criminal offences without distinction from the most simple to the most complex". It concluded that the public interest could not be invoked to justify the use of answers compulsorily obtained in a non-judicial investigation to incriminate the accused during the trial proceedings.

Moreover, the Court also recalls that the Brogan case (Brogan and Others v. the United Kingdom judgment of 29 November 1988, Series A no. 145-B) concerned the arrest and detention, by virtue of powers granted under special legislation, of persons suspected of involvement in terrorism in Northern Ireland. The United Kingdom Government had relied on the special security context of Northern Ireland to justify the length of the impugned detention periods under Article 5 § 3. The Court found that even the shortest periods of detention at issue in that case would have entailed consequences impairing the very essence of the relevant right protected by Article 5 § 3. It concluded that the fact that the arrest and detention of the applicants were inspired by the legitimate aim of protecting the community as a whole from terrorism was not, on its own, sufficient to ensure compliance with the specific requirements of Article 5 § 3 of the Convention.

59. The Court, accordingly, finds that the security and public order concerns of the Government cannot justify a provision which extinguishes the very essence of the applicant's rights to silence and against self incrimination guaranteed by Article 6 § 1 of the Convention.

60. It concludes therefore that there has been a violation of the applicant's right to silence and of his privilege against self-incrimination guaranteed by Article 6 § 1 of the Convention.

Moreover, given the close link, in this context, between those rights guaranteed by Article 6 § 1 and the presumption of innocence guaranteed by Article 6 § 2 of the Convention (see paragraph 40 above), the Court also concludes that there has been a violation of the latter provision.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

61. The applicant also complained that section 52 of the 1939 Act constituted a violation of the rights guaranteed by Article 10 of the Convention, which Article, in so far as relevant, reads as follows:

> "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 ...
>
> 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 the ... rights of others...”

62. The Government submitted that any interference with the applicant’s rights under Article 10 was in accordance with the law and proportionate to legitimate aims pursued, given the margin of appreciation afforded to the State in such cases. They repeated their submissions under Article 6 about the threat to national security, pointed out that the operation of section 52 was strictly limited and recalled that the arrest of the applicant took place in the context of police enquiries into an atrocity by subversives.

The applicant referred to the correlative right not to speak or to furnish information guaranteed by Article 10. He relied on the K. v. Austria case (judgment of 2 June 1993, Series A no. 255-B, application no. 16007/90 Commission Report of 13 October 1992), noting that the Commission held that the prosecution and conviction of that applicant constituted a violation of the right not to impart information guaranteed by Article 10 of the Convention. Referring to his submissions made under Article 6, he maintained that his conviction and sentencing under section 52 of the 1939 Act constituted a disproportionate interference with his rights under Article 10 of the Convention.

63. The Court considers that the essential issue raised by the applicant was the compulsion imposed by section 52 of the 1939 Act to respond to the questions of police officers investigating the commission of serious criminal offences, a matter considered above by the Court under Article 6 of the Convention. It does not consider therefore that the applicant’s complaints under Article 10 of the Convention give rise to any separate issue.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> “If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

65. The applicant did not claim that he had suffered any pecuniary damage. In so far as the submission that his criminal conviction would create difficulties in seeking work and a visa to the United States could be considered in this context, the Court notes that he has not produced any evidence whatsoever of any applications for or refusals of work or of such a visa.

66. The applicant claimed compensation, however, for non-pecuniary loss. He pointed out that, as a direct result of section 52 of the 1939 Act, he was convicted of a criminal offence and served a substantial term of imprisonment (from 20 January to 4 June 998).

He therefore claimed IR£50,000 (Irish pounds) for all the trauma and distress of his trial, conviction and imprisonment pursuant to section 52 of the 1939 Act. He pointed out that his imprisonment cut him off from his family and friends and denied him access to his normal social and recreational activities. He further claimed an unspecified sum for the damage to his reputation as a result of his trial and conviction, particularly felt by the applicant in the Limerick area where his arrest, detention, questioning, trial and conviction took place.

67. The Government accepted that, in the event of the Court finding a violation, it was reasonable to assume that the applicant suffered some distress and discomfort as a result of his imprisonment. However, the Government requested the Court to take into account the fact that the section 52 requests were put to the applicant in the context of a police investigation into the attack in Adare where one police officer had been shot dead and another seriously wounded. They also considered relevant that the applicant did not substantiate his pecuniary damages claims. They suggested a lesser sum as the Court considered equitable.

The Government also maintained that the applicant had not suffered any damage to his reputation as a result of his conviction: they recalled that many other members of the applicant's family were also arrested and questioned in relation to the Adare incident and pointed out that the applicant had adduced no evidence to show how, because of his conviction, he was held in less public esteem in the circles in which he moved. Alternatively, should the Court take the view that the applicant nevertheless suffered some loss of reputation, the finding of a violation, or any award made under the heading of personal trauma and distress, would suffice.

68. The Court observes that, as a direct consequence of the violation found in this case, the applicant was convicted of a criminal offence and spent from 20 January to 4 June 1998 in prison. It notes that the applicant has not attempted in any way to detail or substantiate the alleged impairment of reputation to which he referred, although it accepts that, as a result of his criminal conviction and imprisonment, the applicant experienced certain inconvenience, anxiety and distress.

The Court concludes that the applicant suffered non-pecuniary damage for which a finding of a violation does not afford just satisfaction. Making its assessment on a equitable basis, it awards the applicant IR£4,000 in compensation for non-pecuniary damage.

B. Costs and expenses

69. The applicant claimed IR£605 (inclusive of value-added tax - "VAT") for the costs of the domestic proceedings. As to the Convention proceedings, he claimed IR£39.20 for obtaining domestic court documents, IR£2000 in respect of counsel's fees (it not being specified whether this was exclusive or inclusive of VAT and no voucher being submitted), IR£8394.38 as regards solicitors' fees (inclusive of VAT) together with IR£302.50 (inclusive of VAT) in respect of outlay. The applicant expressly claimed a total amount of IR£11,813.58. The Government accepted that, subject to certain items in the applicant's bill of costs being properly vouched (including counsel's fees), those fees were reasonable. However, they pointed out that the total of the separate figures claimed was IR£11,341.08 and not IR£11,813.08 as claimed by the applicant.

70. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, 25.3.99, § 79).

As to the voucher for counsel's fees to which the Government refer, the Court considers the work completed by counsel for the Convention proceedings to be evident from the detailed bill of costs submitted by the applicant's solicitor and it notes that the Government did not, in principle, contest the amount claimed in respect of counsel. However, given the failure to indicate whether that amount was inclusive of VAT or not and the absence of the relevant voucher, the Court awards the applicant the amount claimed in this respect, IR£2000, but as a figure inclusive of VAT. The discrepancy, highlighted by the Government, between the individual and total figures claimed has also been noted by the Court.

71. Having regard to the foregoing, the Court awards to the applicant the separate amounts claimed, with counsel's fee being awarded at IR£2000 inclusive of VAT. The applicant's award, in respect of his domestic and Strasbourg legal costs and expenses, amounts therefore to IR£11,341.08 (which figure is inclusive of any VAT that may be chargeable) less the amount of legal aid paid by this Court to the applicants in the sum of 5000 FRF.

C. Default interest

72. According to the information available to the Court, the statutory rate of interest applicable in Ireland at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 §§ 1 and 2 of the Convention;

2. *Holds* that no separate issue arises under Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:
      (i) IR£4,000 (four thousand Irish pounds) to the applicant in respect of non-pecuniary damage;
      (ii) a total of IR£11,341.08 (eleven thousand three hundred and forty-one Irish pounds and eight pence) to the applicant for the costs and expenses of the domestic and Strasbourg proceedings (inclusive of any value-added tax that may be chargeable) less 5,000FRF (five thousand French francs) paid by this Court in legal aid;
   (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 21 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER — Georg RESS
Registrar — President