

AS TO THE ADMISSIBILITY OF

Application No. 16751/90
by Dominic McGLINCHEY
against Ireland

The European Commission of Human Rights sitting in private
on 5 March 1991, the following members being present:

MM. C.A. NØRGAARD, President

J.A. FROWEIN

S. TRECHSEL

E. BUSUTTIL

G. JÖRUNDSSON

A.S. GÖZÜBÜYÜK

A. WEITZEL

J.-C. SOYER

H.G. SCHERMERS

H. DANELIUS

Mrs. G.H. THUNE

Sir Basil HALL

MM. F. MARTINEZ RUIZ

C.L. ROZAKIS

MM. L. LOUCAIDES

J.-C. GEUS

A.V. ALMEIDA RIBEIRO

M.P. PELLONPÄÄ

Mr. J. RAYMOND, Deputy 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 19 January 1990
by Dominic McGLINCHEY against Ireland and registered on 20 June 1990
under file No. 16751/90;

Having regard to the report provided for in Rule 47 of the
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Irish citizen born in 1954 and currently
serving a prison sentence in Portlaoise Prison, Ireland. He is
represented by Mr. McDonnell, a solicitor practising in Dundalk.

A previous application (No. 14774/89) was declared inadmissible
on 4 September 1989.

On 24 June 1981, a warrant for the applicant's arrest on a
charge of murder was issued in Northern Ireland and endorsed in
Ireland for execution under the 1965 Extradition Act. The applicant
was arrested on 27 January 1982 and on 2 February 1982 his extradition
ordered by the District Court. On 9 February 1982, he applied to the
High Court claiming release on the ground that his offence was
political. His application and subsequent appeal were refused. The
applicant, who had been released on bail, then failed to comply with
its terms and disappeared.

On 17 March 1984, the applicant was arrested in

Newmarket-upon-Fergus under Section 30 of the Offences Against the State Act 1939 after an incident in which the police entered a house under a search warrant and were fired upon by a number of armed men. An extradition order being in existence, the applicant was extradited to Northern Ireland to await trial there. The applicant had applied to the High Court to restrain his extradition but his application was refused. His appeal to the Supreme Court was also dismissed and he was handed over into the custody of the Royal Ulster Constabulary (R.U.C). The applicant was tried and convicted in Northern Ireland but the conviction was then set aside on appeal on 9 October 1985.

On 18 May 1984 a warrant was issued at Ennis for the applicant's arrest for offences allegedly committed on 17 March 1984, e.g. shooting at a member of the police with intent to kill and with intent to resist lawful apprehension.

On 2 July 1984, the Special Criminal Court found guilty the other two men, arrested with the applicant on 17 March 1984. The applicant first became aware of the transcript of the proceedings in this case in 1987.

On 11 October 1985, following the applicant's extradition from Northern Ireland, the arrest warrant was executed at Carrickarnon and the charges put to the applicant, who was taken to Ennis and detained in custody by the District Court for a week on the charge of shooting at a police officer with intent to commit murder.

On 18 October 1985, the applicant was brought back before the court. The charge of shooting at a member of the police with intent to murder was withdrawn and he was remanded in custody on a charge of possession of a firearm with intent to endanger life.

On 4 November 1985, a certificate was issued by the Director of Public Prosecutions in respect of the applicant's trial to the effect that the applicant should be tried before the Special Criminal Court.

The applicant was tried before the Special Criminal Court between 18 February 1986 and 11 March 1986. On 11 March 1986, he was found guilty of three offences (possession of a firearm with intent to endanger life, possession of a firearm with the purpose of resisting arrest and shooting at a police officer with intent to resist his lawful apprehension) and sentenced to 10 years' imprisonment.

In May and June 1987, the applicant made several applications for habeas corpus to the High Court, which refused them. One of the grounds of the application concerned the fact that the judge presiding at the applicant's trial had retired as a High Court judge and the applicant argued that he was no longer qualified to preside over the trial. On 27 July 1987 the Supreme Court ordered the High Court to hold an enquiry pursuant to Article 40 of the Constitution into the legality of the applicant's detention.

The application was heard before the High Court on 14 December 1987. In its judgment dated 13 January 1988 the High Court found inter alia that the Special Criminal Court was a court duly established by law and exercising lawful authority in the matter upon which the detention of the applicant was ordered. The applicant's detention was accordingly found to be in accordance with law. Whilst commenting that the lawfulness of pre-trial procedures was for the normal trial and appeal courts to determine, the Court also found no substance in the arguments of the applicant as to the validity of the arrest warrants and procedures utilised in his arrest and committal for trial. The applicant appealed to the Supreme Court. In its decision dated 20 July 1988, the Supreme Court held that while the presiding judge had retired as a High Court judge he nonetheless fell within the statutory qualification for sitting since he still remained

a barrister of not less than 7 years' standing. The Court also found no substance in the applicant's other procedural complaints concerning his arrest and committal for trial. The Court concluded that the applicant was a person properly convicted by a duly established and lawful court and that there was no doubt as to the legality of his detention.

The applicant appealed to the Court of Criminal Appeal against his conviction of 11 March 1986 on 12 grounds, inter alia, that the applicant had not been properly arrested and charged at the first reasonable opportunity.

On 10 April 1989, the Court of Criminal Appeal refused leave to appeal and ruled, without hearing argument, that it could not deal with certain grounds since they had been dealt with by the Supreme Court on 20 July 1988 and were res judicata. Amongst the grounds excluded by the Court was that concerning the lawfulness of the applicant's arrest and detention on 17 March 1984. Following a hearing, the Court found that the other grounds raised by the applicant had no substance, and concluded that the trial was satisfactory and in no way unfair. In its decision of 11 April 1989 the Court of Appeal noted that no member of the Special Criminal Court which found the other two men guilty on 2 July 1984 also participated in the trial and conviction of the applicant in 1986. Moreover, no application had been made to the Special Criminal Court for a transcript of the proceedings concerning the two men, and no questions concerning these proceedings had been put by the applicant's counsel to witnesses in his own trial by way of cross-examination or otherwise.

On 5 October 1989 the Office of the Attorney General refused to grant a certificate, under Section 29 of the Courts of Justice Act 1924, to allow an appeal to the Supreme Court from the decision of the Court of Criminal Appeal.

On 8 June 1989, the High Court refused a new application by the applicant for an enquiry into the legality of his detention pursuant to Article 40 of the Constitution. It held that most, if not all, of the matters raised by the applicant had been dealt with in the previous reviews in 1987 and 1988, and that any other matters raised were too vague to constitute new relevant information justifying further enquiry. The applicant appealed to the Supreme Court which on 21 December 1989 found that the great majority of the grounds had already been subject of a lengthy enquiry by the High Court and that insofar as new matters were raised they did not contain any matter which cast doubt on the legality of the applicant's detention.

The applicant also instituted proceedings claiming, inter alia, that the warrant for his arrest issued on 24 June 1981 in Northern Ireland was invalid, his subsequent detention in 1982 had been illegal and that the Extradition Act 1965 failed to protect the applicant against such illegal proceedings and was unconstitutional. The purpose of the proceedings was to obtain declarations, not damages. The applicant expressly acknowledged that declarations in his favour on these issues could not have any bearing on the validity of his present detention. Mr. Justice Costello found on 6 December 1989 that the warrant of 24 June 1981 had apparently not been issued in accordance with the laws of Northern Ireland and was invalid. However, he made no determination as to the lawfulness of the applicant's arrest and detention under Irish law on 27 January 1982. Instead he held that, even assuming that this meant that the applicant's subsequent detention in 1982 under the extradition order was illegal, the Extradition Act 1965 was not unconstitutional since it contained safeguards allowing the validity of warrants and orders to be challenged by way of habeas corpus. The question of the legality of the applicant's arrest in 1984 was not raised again in the pleadings. The applicant's request for declarations was refused.

COMPLAINTS

The applicant complains of being unlawfully deprived of his liberty on 17 March 1984 contrary to Article 5 para. 1 of the Convention because allegedly he was unlawfully sent from the jurisdiction on 17 March 1984 without charges being preferred or without being brought before a judge or other officer of the law, and because he was convicted by an incompetent court. He alleges that he was not informed promptly of any charge against him, i.e. until 11 October 1985, contrary to Article 5 para. 2 of the Convention. He also alleges that he was not brought promptly before a judge contrary to Article 5 para. 3 of the Convention. He states further that he did not receive a proper hearing as required under Article 5 para. 4 since the High Court on 14 December 1987 allegedly excluded from consideration all matters relating to 17 March 1984 and limited its own enquiry, and on 21 December 1989 the Supreme Court refused to make a further Order of Enquiry.

The applicant next complains that he was not presumed innocent as required by Article 6 para. 2 of the Convention. He submits that he was not informed promptly of the charges against him as required by Article 6 para. 3 (a) of the Convention or provided with a transcript of the proceedings against the other two men arrested on 17 March 1984, contrary to Article 6 para. 3 (b) and (d) of the Convention. He contends that he did not receive a fair, independent and impartial hearing as required by Article 6 para. 1 of the Convention since, *inter alia*, the Special Criminal Court did not facilitate the disclosure of the transcript of the previous proceedings and the Court of Criminal Appeal on 10 April 1989 had determined the appeal before the hearing took place by taking the view that certain grounds were *res judicata* and refusing to hear further arguments on them.

The applicant also invokes Article 13 of the Convention in that by reason of the segmenting of his complaints he has not had an effective remedy for his unlawful deprivation of liberty which is a consequence of the fact that no lawful authority existed to commence the chain of events arising from the attempt to execute a warrant unlawfully issued in Northern Ireland, and Article 14 in that the lack of effective remedy in his case is a direct cause of his political opinions.

THE LAW

1. The applicant has complained of being unlawfully deprived of his liberty on 17 March 1984 contrary to Article 5 para. 1 (Art. 5-1) of the Convention. He has also complained of the ensuing proceedings: - of not being informed promptly of the shooting charges, of not being brought before a judge, of a denial of an effective remedy to challenge the lawfulness of his detention, a denial of the presumption of innocence, inadequate transcript facilities and a denial of fair, independent or impartial hearings before the trial and appeal courts. He invokes Article 5 paras. 1, 2, 3 and 4 (Art. 5-1, 5-2, 5-3, 5-4) and Article 6 paras. 1, 2, 3 (a), (b) and (d) (Art. 6-1, 6-2, 6-3-a, 6-3-b, 6-3-d).

However, the Commission notes that the final decision regarding the criminal proceedings against the applicant, which confirmed his conviction and sentence and the lawfulness of pre-trial and trial procedures, was that of the Court of Criminal Appeal on 10 April 1989. The applicant's further attempts to revive these proceedings through the High Court did not effectively continue them, given the High Court's decision of 8 June 1989, upheld by the Supreme Court on 21 December 1989, that most matters had already been decided by the courts and that the applicant's remaining claims presented no new relevant information justifying further enquiry. Moreover, the Attorney General's decision of 5 October 1990 to refuse

a certificate under Section 29 of the Courts of Justice Act 1924 cannot be taken into account in determining the date of the final decision (No. 9136/80, Dec. 10.7.91, D.R. 26 p. 242).

The application was introduced on 19 January 1990, more than six months after the Court of Criminal Appeal's decision of 10 April 1989. The Commission is, therefore, unable to deal with these aspects of the case as the applicant has failed to observe the six months' rule laid down in Article 26 (Art. 26) of the Convention. It follows that this part of the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

Nevertheless, as regards the applicant's complaint that he was unlawfully detained on 17 March 1984, contrary to Article 5 para. 1 (Art. 5-1) of the Convention, and even assuming that the applicant may be said to have complied with the requirements of Article 26 (Art. 26) of the Convention, the Commission considers that anyway this aspect of the case must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention for the following reasons: There is no evidence in the case-file that the applicant was not lawfully detained pursuant to Article 5 para. 1 (c) (Art. 5-1-c) of the Convention on his arrest for firearms offences in accordance with Section 30 of the Offences Against the State Act 1939. Almost immediately after his arrest he was also detained pursuant to the extradition order issued in 1982. He was, therefore, lawfully detained as a person against whom action was being taken with a view to extradition, within the meaning of Article 5 para. 1 (f) (Art. 5-1-f) of the Convention.

2. Finally, the applicant has complained that he had no effective domestic remedy for his Convention complaints, contrary to Article 5 para. 4 (Art. 5-4) or Article 13 (Art. 13) of the Convention, and that he suffered discrimination, contrary to Article 14 (Art. 14) of the Convention read in conjunction with Article 13 (Art. 13), in view of his political opinions.

However, the Commission finds no evidence in the case-file which might substantiate the applicant's claims. In particular, the Commission notes that the Irish courts have thoroughly examined the lawfulness of the applicant's arrest and detention as of 17 March 1984 and given the applicant every opportunity to defend his rights under Articles 5 and 6 (Art. 5, 6) of the Convention, which in themselves provide stronger guarantees than Article 13 (Art. 13) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission

President of the Commission

(J. RAYMOND)

(C.A.NØRGAARD)