AS TO THE ADMISSIBILITY OF

Application No. 25646/94
by Stephen YOUNG
against Ireland

The European Commission of Human Rights (First Chamber) sitting in private on 17 January 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 31 August 1994 by Stephen YOUNG against Ireland and registered on 14 November 1994 under file No. 25646/94;

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 facts as submitted by the applicant may be summarised as follows. The applicant is of Irish nationality, was born in 1955 and is resident in Co. Meath, Ireland. He is represented before the Commission by Brendan Walsh, a solicitor practising in Dublin.

Particular circumstances of the case

On 11 July 1993 a six year old boy, who had sustained serious head injuries the day before, died while a patient in Beaumont Hospital. The applicant was the only neurosurgeon on duty at Beaumont Hospital at the relevant time and was in charge of the patient's case. A Coroner's Inquest into the death of the patient was ordered.

In the meantime, on 27 January 1994, a member ("a T.D.") of the Dáil (the lower house of the legislature) raised the case during a parliamentary session. The T.D. requested the Minister for Health to:

> "instigate an immediate inquiry into the failure of staff at Beaumont Hospital, Dublin, to operate standard international neurological practices in the case of <the patient> ..."

The T.D. went on to refer to the relevant accident, the serious

head and neck injuries of the patient, his treatment in the first hospital and his transfer to Beaumont Hospital. She then stated as follows:

> "When <the patient> arrived <at Beaumont Hospital> those on duty and in charge failed to operate what can only be described as standard, international neurological management practices for any serious head injury. It is that which must be questioned and investigated in detail. Those in Beaumont insisted that <the patient> be taken off the ventilator when he arrived, an extraordinary and shocking act given his serious head injury. Despite the protestations of the nurse and those who had accompanied the child ... those in charge in Beaumont Hospital insisted, went ahead and took the child off the ventilator. Within 24 hours the child's brain had swollen, ... and very shortly and tragically he died. ... The questionable neurological management practice is what I want the Minister to investigate. The trauma for the parents on losing their six year old boy is one thing but to have question marks about how their child was subsequently treated compounds their anguish and heartbreak. ... I know I can trust him to immediately instigate a report, followed by a medical inquiry, into why international neurological management practices were not operated ..."

The Minister for Health stated in response that he had been advised that it was inappropriate for him to make any public comment pending the outcome of the Coroner's Inquest. However, he indicated that on receipt of a report from Beaumont Hospital, which he had requested, and of the result of the Coroner's Inquest, he would determine whatever action, if any, was appropriate.

The T.D.'s remarks were subsequently reported in the press. On 4 February 1994 the applicant's solicitor wrote to the Chairman of the Dáil pointing out, inter alia, that all those involved in the intimate world of Irish medicine, a world which was of particular importance to the applicant in light of his profession, would have known that the applicant was in charge of the patient's treatment. While accepting "fully" that there must be an absolute privilege to cover statements made in parliament, the applicant's solicitor took issue with the timing of the statement of the T.D. (the Coroner's Inquest not having taken place) and with the apparent lack of any investigation before the T.D. made the statement. The letter pointed out that the applicant had offered to meet the T.D. to discuss the matter but that the T.D. had not taken up the offer. The Chairman of the Dáil replied that the matter would be brought to the attention of the Committee on Procedure and Privileges shortly.

On 2 March 1994 that committee decided that no breach or abuse of Dáil privilege had occurred. On 28 June 1994, after a Coroner's Inquest (the purpose of which is to establish the facts), the jury returned a verdict by a majority of accidental death. The Coroner commented that it would serve the interests of inquests if public comment would be withheld until the facts are established.

On 30 June 1994 the applicant's solicitor again wrote to the Chairman of the Dáil pointing out that the applicant had been completely vindicated by the Coroner's Inquest and that the T.D. had defamed the applicant who had no recourse whatsoever except to a committee before which he has no right of audience. He requested that the committee reconvene and hear the applicant. The Chairman responded, by letter dated 11 July 1994, stating that the remit of the committee was confined to establishing whether an abuse of privilege had occurred and that the committee had deliberated on whether the statement of the T.D. was in conformity with the established rules of debate. The committee decided that prima facie there had been no abuse of Dáil privilege and that, as a result, neither the T.D. nor the applicant were called to appear before the committee. The Chairman concluded by

stating that no further action was required to be taken.

On 1 July 1994 the applicant's solicitor wrote to the T.D. in question asking for an apology. The T.D responded that she was aware of the inquest result but that the question she posed in the Dáil debate remained to be answered. The applicant's solicitor responded on 19 July 1994 pointing out that the T.D.'s letter was bewildering in that it signalled that she did not accept the Coroner's verdict. An apology was again requested. This last letter was acknowledged by the T.D..

The family of the deceased patient have lodged a formal complaint of professional misconduct against the applicant and an investigation by the Medical Council is ongoing.

Relevant domestic law and practice

Article 15.10 of the Constitution states that each house of the Oireachtas (the legislature - of which the Dáil is one house) shall have the power to ensure freedom of debate. Article 15.12 provides that all official reports and publications of the Oireachtas or of either house thereof and utterances made in either house wherever published shall be privileged. Article 15.13 goes on to provide that:

> "The members of each house of the Oireachtas ... shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself."

After each general election various T.D.s are appointed to the Committee on Procedure and Privileges which committee considers matters of procedure generally, recommends any necessary changes to the Standing Orders and considers and reports, as and when requested to do so, on the privileges attaching to T.D.s.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention about the lack of a fair and public hearing within a reasonable period of time by an independent and impartial tribunal established by law through which he could have enforced his constitutionally protected, and his civil right, to his good name. The only hearing available was that of the Committee on Procedure and Privileges which, for a number of reasons, was insufficient.

The applicant also complains under Article 8 of the Convention in that his private life was the subject of an arbitrary interference through false statements relating to him by a public authority causing the applicant loss and damage.

2. He further complains about being deprived of his good name and reputation in the exercise of his profession contrary to Article 1 of Protocol 1.

3. The applicant further complains under Article 13 of the Convention about the lack of an effective domestic remedy in respect of the attack on his good name, his private life and his property.

THE LAW

The applicant raises a number of complaints in relation to statements made by a T.D. to which an immunity attaches pursuant to the relevant provisions of Article 15 of the Irish Constitution. The Commission finds that it is not necessary to determine whether the applicant's recourse to the Committee on Procedure and Privileges interrupted the running of the six month period referred to in Article 26 (Art. 26) of the Convention because the application is, in any

event, inadmissible for the reasons set out below.

1. In the first place, the applicant essentially complains under Article 6 para. 1 (Art. 6-1) of the Convention that he had no access to a fair and public hearing by an independent and impartial tribunal through which he could have enforced his constitutionally protected, and his civil right, to his good name. The only tribunal which considered the matter was the Committee on Procedure and Privileges. However, he argues that the relevant hearing of that committee was in private and he could not participate in any way. The committee was not, according to the applicant, independent (being made up of T.D.s), it only considered if the relevant T.D.'s statement was made in the proper course of debate and it did not determine the question as to whether the applicant's good name had been attacked and what redress should be provided.

Secondly, the applicant also complains under Article 8 (Art. 8) of the Convention that his private life was the subject of an arbitrary interference through false statements relating to him by a public authority causing the applicant loss and damage.

Articles 6 para. 1 and 8 (Art. 6-1, 8) of the Convention, insofar as relevant read as follows:

Article 6 (Art. 6) "1. In the determination of his civil rights ... , everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

Article 8 (Art. 8) "1. Everyone has the right to respect for his private ... life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ..., public safety ..., for the protection of health ..., or for the protection of the rights and freedoms of others."

The Commission recalls that it previously rejected a complaint under Article 6 para. 1 (Art. 6-1) of the Convention that there had been a failure to determine civil rights by reason of parliamentary immunity (No. 3374/67 Collection of Decisions 29, p. 29). In that case, the Commission considered that Article 6 para. 1 (Art. 6-1) of the Convention was to be interpreted subject to the traditional recognition by Contracting States of that immunity. Subsequently, the Commission's Report in the Golder case (No. 4451/70, Comm. Report 1.6.73, p. 44 para. 93) clarified that parliamentary immunity involves a lack of access to the defendant rather than to court and that the right of access to court, contained in Article 6 para. 1 (Art. 6-1) of the Convention, does not require unlimited jurisdiction.

More recently the Court has had occasion to consider the concept of privilege in its Fayed judgment (Eur. Court H.R., Fayed judgment of 21 September 1994, Series A no. 294-B) and the Commission considers it appropriate to follow the approach of the Court in that case for the purposes of the present application. Accordingly, the Commission does not consider it necessary to determine, in the circumstances of this case, the precise nature of the privilege accorded by Article 15 of the Irish Constitution - namely, whether it is of a procedural nature removing the jurisdiction of the courts and thus within the scope of Article 6 para. 1 (Art. 6-1) of the Convention or whether it is of a substantive nature limiting the extent of a civil right and thus more properly considered within the scope of Article 8 (Art. 8) of the Convention - because the same central issues of legitimate aim and proportionality are posed by these two complaints (Eur. Court H.R., Fayed judgment loc. cit., pp. 49-51, paras. 65-68).

The Commission has therefore considered the legitimacy of the aims pursued by the relevant provisions of Article 15 of the Irish Constitution together with the proportionality between the means employed and those aims in determining the applicant's complaints under Articles 6 para. 1 and 8 (Art. 6-1, 8) of the Convention about an attack on his reputation for which he had no recourse to the courts.

The underlying aim of the immunity accorded to T.D.s is clearly in furtherance of the public interest to allow T.D.s to engage in meaningful debate and represent their constituents on matters of public interest (in the present case public safety and the quality of medical treatment in hospitals) without having to restrict their observations or edit their opinions because of the danger of being amenable to a court or other such authority.

Turning to whether the immunity was proportional in the circumstances of the present case the Commission recalls, in the first place, that in the above mentioned Fayed judgment the Court did not find it decisive even if the relevant privilege was to be considered as absolute (Fayed judgment, loc. cit., p. 53, para. 77).

The Commission notes that the impugned statement did not mention the applicant by name and it is difficult to conceive of a manner in which a T.D. could address a comment to the Minister for Health questioning treatment afforded to a particular patient without, at least indirectly, referring to the consultant in charge of that patient's treatment. Having found the aim of free debate in the public interest legitimate, it is not open to the Commission to apply the test of proportionality in such a manner as to render meaningful debate impracticable (Fayed judgment, loc. cit., p. 55, para. 81). In addition, the Commission notes the immediate and restrained response of the Minister for Health in reply to the T.D.'s statement.

Moreover, it is not unreasonable to assume that the small circle of colleagues, who would have made the connection between the T.D.'s statement and the applicant, would have equally noted the outcome of the Coroner's Inquest, which inquest the applicant's solicitor stated completely vindicated his client's position. Furthermore, it is noted that the applicant himself, by way of his solicitor's letter of 4 February 1994, "fully" accepted that there must be an absolute privilege to cover statements made in parliament.

In such circumstances the Commission considers that a reasonable relationship of proportionality could be said to exist between the immunity accorded to T.D.s in relation to statements made in parliament and the legitimate aim of free debate pursued in the public interest.

In light of the above, the Commission does not consider it necessary to determine the contribution to the proportionality of the immunity by the review conducted by the Committee on Procedure and Privileges. While such a review may be relevant to the question of proportionality - even where it does not provide a determination of whether the applicant was defamed or not - (Fayed judgment, loc. cit., p. 54, para. 78), the Commission considers the matters referred to above sufficient to demonstrate the relevant proportionality.

Accordingly, the Commission concludes that the applicant's complaints under Articles 6 para. 1 and 8 (Art. 6-1, 8) of the Convention are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains about being deprived of his good name and reputation in the exercise of his profession contrary to Article 1 of Protocol 1 (P1-1).

Even assuming that the applicant's complaints under Article 1 of Protocol 1 (P1-1) fall within the scope of that Article, the Commission

has found as follows. Insofar as the applicant complains about an attack made on his professional reputation without his having any recourse to the courts, the Commission considers that this does not give rise to any issue separate to those dealt with under Articles 6 para. 1 and Article 8 (Art. 6-1, 8) of the Convention. In addition and insofar as the applicant's complaint under Article 1 of Protocol 1 (P1-1) relates to the consequent negative impact of the T.D.'s statement on his earnings, practice and career, the Commission considers that such a complaint has not been substantiated.

The Commission therefore concludes that the applicant's complaints under Article 1 of Protocol 1 (P1-1) are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Finally, the applicant complains under Article 13 (Art. 13) of the Convention about the lack of an effective domestic remedy, due to the privilege accorded to T.D.s, in relation to the attack on his good name, his private life and his property.

However, the Commission recalls that insofar as the applicant's complaints fall within the scope of Article 6 (Art. 6) of the Convention, the guarantees of Article 13 of the Convention are superseded by those of Article 6 para. 1 (Art. 6-1) of the Convention (see, for example, No. 13021/87, Dec. 4.7.88, D.R. 57 p. 268). Accordingly, the Commission does not consider that such complaints give rise to any separate issue under Article 13 (Art. 13) of the Convention.

In addition and insofar as the applicant's complaints fall within the scope of Article 8 (Art. 8) of the Convention or of Article 1 of Protocol 1, the Commission recalls the constant case-law of the Convention organs to the effect that Article 13 (Art. 13) of the Convention does not require a remedy in domestic law for all claims alleging a breach of the Convention; the claim must be an arguable one (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). In light of the above conclusions of the Commission concerning the applicant's complaints under Article 8 and Article 1 of Protocol 1 (Art. 8, P1-1), the Commission finds that the applicant does not have an arguable claim of a breach of those rights and freedoms which warrants a remedy under Article 13 (Art. 13) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber President of the First Chamber

(M.F. BUQUICCHIO) (C.L. ROZAKIS)