AS TO THE ADMISSIBILITY OF

Application No. 18759/91
by John Mitchell McLAUGHLIN
against the United Kingdom

The European Commission of Human Rights sitting in private on 9 May 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY

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

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

Having regard to the application introduced on 23 August 1991 by John Mitchell McLAUGHLIN against the United Kingdom and registered on 21 September 1991 under file No. 18759/91;

Having regard to :

- reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 1 March 1993 and the observations in reply submitted by the applicant on 20 July 1993;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Irish citizen, born in 1945 and resident in Derry, Northern Ireland. In the proceedings before the Commission he is represented by Mr. P.J. Madden, a solicitor practising in Belfast.

The facts of the case may be summarised as follows.

(a) The particular circumstances of the case

The applicant is an active member of Sinn Fein, a political party. In the 1985 local government elections in Northern Ireland he was elected to Derry City Council. In 1987 he was elected chairman of

the Council's Finance and General Purposes Committee. He is a member of several other committees of Derry City Council and his party's spokesman on the economy. In 1989 he was reelected as a city councillor.

On 19 October 1988, the Secretary of State for the Home Department issued two directives, one addressed to the British Broadcasting Corporation (BBC), the other to the Independent Broadcasting Authority (IBA), in the following terms:

> "1. ... I hereby require [the BBC] [the IBA] to refrain at all times from sending any broadcast matter which consists of or includes -
>
> > any words spoken, whether in the course of an interview or discussion or otherwise, by a person who appears or is heard on the programme in which the matter is broadcast where -
> >
> > (a) the person speaking the words represents or purports to represent an organisation specified in paragraph 2 below, or
> >
> > (b) the words support or solicit or invite support for such an organisation,
> >
> > other than any matter specified in paragraph 3 below.
>
> 2. The organisations referred to in paragraph 1 above are -
>
> > (a) any organisation which is for the time being a proscribed organisation for the purposes of the Prevention of Terrorism (Temporary Provisions) Act 1984 or the Northern Ireland (Emergency Provisions) Act 1978; and
> >
> > (b) Sinn Fein, Republican Sinn Fein and the Ulster Defence Association.
>
> 3. The matter excluded from paragraph 1 above is any words spoken -
>
> > (a) in the course of proceedings in Parliament, or
> >
> > (b) by or in support of a candidate at a parliamentary, European Parliamentary or local election pending that election."

The Home Secretary explained the reasons for the measure in a statement to Parliament on 19 October 1988:

> "For some time broadcast coverage of events in Northern Ireland has included the occasional appearance of representatives of para-military organisations and their political wings, who have used these opportunities as an attempt to justify their criminal activities. Such appearances have caused widespread offence to viewers and listeners throughout the United Kingdom, particularly just after a terrorist outrage. The terrorists themselves draw support and sustenance from access to radio and television - from addressing their views more directly to the population at large than is possible through the press. The Government have decided that the time has come to deny this easy platform to those who use it to propagate terrorism. Accordingly, I have today issued to the chairmen of the B.B.C. and the I.B.A. a notice... The restrictions will not apply to the broadcast of proceedings in Parliament, and in order not to impair the obligation on the broadcasters to provide an impartial coverage of elections the notices will have a more limited effect during election

periods... These restrictions follow very closely the lines of similar provisions which have been operating in the Republic of Ireland for some years... Broadcasters have a dangerous and unenviable task in reporting events in Northern Ireland. This step is no criticism of them. What concerns us is the use made of broadcasting facilities by supporters of terrorism. This is not a restriction on reporting. It is a restriction on direct appearances by those who use or support violence...".

By way of an explanatory letter dated 24 October 1988 the Home Office offered guidance to the BBC on the interpretation of the notices. The letter, which was copied to the IBA, provided, inter alia, as follows:

"It was asked whether the notice applied only to direct statements by representatives of the organisations or their supporters or whether it applied also to reports of the words they had spoken. We confirmed, as the Home Secretary has made clear in Parliament, that the correct interpretation (and that which was intended) is that it applies only to direct statements and not to reported speech, and that the person caught by the notice is the one whose words are reported and not the reporter or presenter who reports them. Thus the notice permits the showing of a film or still picture of the initiator speaking the words together with a voice-over account of them, whether in paraphrase or verbatim. We confirmed that programmes involving the reconstruction of actual events, where actors use the verbatim words which had been spoken in actuality, are similarly permitted.

...

The BBC also asked whether a member of an organisation or one of its elected representatives could be considered as permanently representing that organisation so that all his words, whatever their character, were covered by the Notice. We confirmed that the Home Office takes the view that this is too narrow an interpretation of the word "represents" in paragraph 1(a) of the text. A member of an organisation cannot be held to represent that organisation in all his daily activities. Whether at any particular instance he is representing the organisation concerned will depend upon the nature of the words spoken and the particular context. Where he is speaking in a personal capacity or purely in his capacity as a member of an organisation which does not fall under the notice (for example, an elected Council), it follows, from that interpretation, that paragraph 1(a) will not apply. Where it is clear, from the context and the words that he is speaking as a representative of an organisation falling under the notice, his words may not be broadcast directly, but (as mentioned above) can be reported. (He may, of course, come within the scope of paragraph 1(b), if his words contain support for the organisation.) Although there may be borderline occasions when this distinction will require a careful exercise of judgment, we believe that the great majority of broadcast material will fall clearly within one case or the other."

On 2 November 1988 the Home Secretary's directions to the BBC and the IBA were debated in the House of Commons, and approved by 243 votes to 179. The House of Lords, also after a debate, took note of the directions on 8 December 1988.

The applicant challenged the directives in judicial review proceedings. His application was dismissed by the High Court of Justice in Northern Ireland on 7 September 1990. Mr. Justice Carswell noted that the case of Brind (R. v. Secretary of State for the Home Department, ex parte Brind and others) had already been determined by the Court of Appeal in London, and dealt with the other issue raised

by the applicant as follows:

> "The sole ground upon which the argument for the applicant was advanced in this court was that the directives were unlawful, in that they violated the provisions of Section 19 of the Northern Ireland Constitution Act 1973. The material part of Section 19(1) reads as follows:
>
> > 'It shall be unlawful for a Minister of the Crown ... to discriminate, or aid, induce or incite another to discriminate, in the discharge of functions relating to Northern Ireland against any person or class of persons on the ground of religious belief or political opinion.'
>
> "Discrimination" is defined in Section 23(2) in the following terms:
>
> > 'For those purposes [ie the purposes of Part III of the Act] a person discriminates against another person or a class of persons if he treats that other person or that class of persons less favourably in any circumstances than he treats or would treat other persons in those circumstances.'
>
> There must in my opinion be a purposive connotation in the words. 'on the ground of' in Section 19(1). Unfavourable treatment of other persons amounting to discrimination against them is not per se made unlawful by the subsection. For A's unfavourable treatment of B to amount to unlawful discrimination, it must be established that it was carried out on the ground of B's religious belief or political opinion. ...
> ...
>
> The following issues accordingly arise in respect of each directive:
>
> ...
>
> 3. if [the Home Secretary] did treat them less favourably [than other persons], whether he did so on the ground of their political opinions...
> ...
> As they operate in the present case, the terms of the directives require the BBC and IBA to refrain from sending any broadcast matter which consists of or includes words where
>
> > (a) the speaker represents Sinn Fein, or
> >
> > (b) the words support or solicit or invite support for Sinn Fein. The courts in this jurisdiction have on several occasions taken judicial notice of the objects of Sinn Fein. In re Curran and McCann's Application [1985] NI 261, 263-4 Hutton J expressed his view in the following passage:
> >
> > > 'Therefore I take judicial notice of the facts that the policy and aims of Sinn Fein are to take power in Northern Ireland with a ballot paper in one hand and an Armalite in the other, that Sinn Fein gives unambivalent support to the 'armed struggle', which is the euphemism used by Sinn Fein to describe terrorist murders and other violent crimes committed by the Provisional IRA, and that when the elected representatives of Sinn Fein take part in the normal work of an elected council this is just one plank of their policy, the other plank being the unambivalent support of murder and other acts of terrorist violence committe[d] to overthrow democratic government in

Northern Ireland.'

...

The relevant characteristic of Sinn Fein, as in the case of the other organisations specified in the directives, is its support for violence, which cannot be classed as a legitimate political opinion. That support is an intrinsic part of the policy of Sinn Fein.

The ban does not operate upon the broadcaster because he is a member of Sinn Fein. Indeed, it applies equally to persons who are not members, if the words which they say support or solicit or invite support for Sinn Fein. It is not aimed at the opinions of the broadcaster, but at his representation of Sinn Fein or his support for it.

It follows from this that the major objections made on behalf of the applicant are not well founded. The first was that Sinn Fein has some legitimate political objectives and activities, and the width of the ban prevents its members from expressing views by means of radio and television on legitimate political topics. Its effect therefore is to bring about the unlawful object of discriminating against Sinn Fein on the ground of political opinion. I am satisfied on the evidence, however, that in issuing his directives the Home Secretary was aiming squarely at terrorism. The first sentence of his statement to the House of Commons on 19 October 1988 referred to 'representatives of paramilitary organisations and their political wings'. He referred at several points to terrorism, and stated that the Government had decided that the time had now come 'to deny this easy platform who use it to propagate terrorism'. He expressed concern about the use made of broadcasting facilities by 'supporters of terrorism', and described his directives as a 'restriction on direct appearances by those who use or support violence'. The same tone was struck in the subsequent debates and statements made in Parliament and in the terms of the resolution passed by the House of Commons on 2 November 1988. If confirmation of this purpose is required, it may be found in the averments contained in the passages which I have quoted from Mr. Scoble's affidavit, which have not been controverted. If the applicant is correct in his contention that the effect of the directives is to hinder members of Sinn Fein in carrying out legitimate political activities, that does not make the actions of the Home Secretary unlawful as discriminating against those members on the ground of political opinion. His object was to reduce the support for terrorism afforded by the participation of Sinn Fein representatives in television and radio broadcasts. It is perfectly clear that the support of terrorist violence is an intrinsic part of Sinn Fein policy. I accept the Home Secretary's contention that in issuing the directives he was attempting to take steps to reduce the publicity given to such support. In my opinion this is not discrimination against the members or supporters of Sinn Fein on the ground of any legitimate political opinions which they hold. The Home Secretary issued the directives on the ground of the support for terrorism which is an integral part of that party's policy. As such it is not in my judgment unlawful under Section 19(1) of the Northern Ireland Constitution Act 1973.

The applicant's second objection to the directives was based upon the fact that the applicant has signed a declaration pursuant to the Elected Authorities (Northern Ireland) Act 1989. This is not the time and place for a

> detailed discussion of or ruling upon the scope and effect of the execution of such a declaration. It is sufficient to say that the directives were not issued in order to prevent the broadcasting of programmes in which particular persons or classes of persons take part. Their object was the prevention of matter of a particular kind being broadcast. It is therefore immaterial that a particular speaker on a broadcast programme may have forsworn support for acts of terrorism, if he represents or expresses support for Sinn Fein, a party whose notorious policy is the support of terrorist violence."

The House of Lords gave its judgments in the case of Brind on 7 February 1991. On 4 March 1991 the applicant abandoned his appeal in the Court of Appeal of Northern Ireland, and it was duly dismissed.

(b) The relevant domestic law

The notices made in the present case were authorised under powers conferred on the Home Secretary in a "Licence and Agreement" of 2 April 1981 in respect of the BBC and under Section 29 of the Broadcasting Act 1981 in respect of the IBA.

The BBC is a public corporation governed by a Royal Charter which defines its objects, powers and obligations, its constitution and the sources and uses of its revenues. The Licence and Agreement prescribes the terms and conditions of the corporation's operations.

Clause 13 (4) of the Licence and Agreement reads as follows:

> "The Secretary of State may from time to time by notice in writing require the Corporation to refrain at any specified time or at all times from sending any matter or matters of any class specified in such notice; and the Secretary of State may at any time or times vary or revoke any such notice..."

Section 29 (3) of the Broadcasting Act 1981 provides that:

> "... the Secretary of State may at any time by notice in writing require the Authority to refrain from broadcasting any matter or classes of matter specified in the notice; and it shall be the duty of the Authority to comply with the notice."

In the case of Brind, the House of Lords rejected the applicant's challenge to the orders, finding that "it was impossible to say that the Secretary of State, in concluding that the modest restrictions imposed by the directives were justified by the important public interest of combating terrorism, had exceeded the limits of his discretion or acted unreasonably in making them" (R. v. Secretary of State for the Home Department, ex parte Brind and others, [1991] 1 AC 696, quotation taken from the headnote).

COMPLAINTS

The applicant complains that as a result of the directions he is prevented from having direct access to the broadcast media: he can no longer contribute to radio and television programmes, participate in televised press conferences, and comment on economic and political developments in the city; he is no longer interviewed on radio and television, and an already scheduled radio interview was cancelled; as a city councillor he has no access to the media on matters of concern to his constituents. The restrictions apply even to matters connected with the affairs of the City Council, in spite of the fact that he is a democratically elected member of the Council representing a lawful political party. Invoking Article 10 of the Convention, he contends that the orders constitute an unjustified interference with his right to receive and impart information and ideas.

Under Article 14 of the Convention the applicant complains that he has been subject to discriminatory treatment as the directions apply only to representatives of Sinn Fein and not to those of other political parties.

Finally, the applicant complains that he had no effective remedy before a national authority for his Convention claims, contrary to Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 August 1991 and registered on 21 September 1991.

On 31 August 1992 the Commission decided to communicate the application to the respondent Government for observations on its admissibility and merits.

The Government submitted their observations on 1 March 1993 and the applicant submitted his observations in reply on 20 July 1993.

THE LAW

1. The applicant alleges a violation of Article 10 (Art. 10) of the Convention by virtue of the effect which the Home Secretary's orders to the BBC and the IBA have on him.

Article 10 (Art. 10) of the Convention provides, so far as relevant, 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 and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Government accept that, for the purposes of Article 10 (Art. 10) of the Convention, there has been an interference with the applicant's right to freedom of expression, but they point out that the extent of the interference is less than the restrictions applicable in Ireland when the Commission decided Purcell v. Ireland (Application No. 15404/89, Dec. 16.4.91), and in any event is mitigated by the fact that the notices do not limit the words which can be spoken on radio and television, but merely require (for statements falling within the ambit of the notices) an actor's voice to be used.

The applicant underlines that his position is not to be compared with that of journalists, as he is a democratically elected local councillor who is a member of a lawful political party. He denies that the restrictions are in fact as limited as the Government maintain, as in practice he is not asked to give interviews on any matters at all because of his membership of a lawful political party. He states that the effect of the restrictions is to give an unfair advantage to his political opponents who are not subject to the restrictions.

The Commission recalls that Article 10 (Art. 10) rights can be

interfered with by restrictions on the manner of conveying information, as well as on the content of the information (Nos. 11553/85 and 11658/85, Dec. 9.3.87, D.R. 51, p. 136, 144; Eur. Court H.R., Autronic judgment of 22 May 1990, Series A no. 178, p. 23, para. 47).

The Commission cannot establish whether the fact that the applicant is not interviewed on specific or general political questions is attributable to the directions given by the Home Secretary to broadcasters, but accepts that the directions affect the way in which he is able to impart information. It also accepts that it is probable that a councillor whose statements must be "voiced over" is less likely, all else being equal, to be interviewed for television or radio than one whose statements can be broadcast as they are made.

The Commission finds that the applicant has been subjected to interference with his Article 10 (Art. 10) rights.

The interference entails a violation of Article 10 (Art. 10) of the Convention if it does not fall within one of the exceptions provided for in paragraph 2 (Art. 10-2). The Commission must therefore examine whether the interference was "prescribed by law", whether it had an aim or aims that is or are legitimate under Article 10 para. 2 (Art. 10-2), and whether it was "necessary in a democratic society" to achieve that aim or those aims.

The Government submit that the Licence and Agreement of 1981 with the BBC and the Broadcasting Act 1981 in the case of the IBA provide the necessary regulatory background to the notices, and that, when taken together with the explanatory letter from the Home Office, the directions fall within the concept of "law" as defined by the European Court of Human Rights in the Sunday Times case (Eur. Court H.R., Sunday Times judgment of 26 April 1979, Series A no. 30, p. 31, para. 49). The applicant points out that the notice made to the IBA in the present case, unlike the Order in Application No. 15404/89, did not have to be laid before Parliament, and that the notice to the BBC was made pursuant to a licensing agreement, which is not of the nature of a "law" within the meaning of Article 10 (Art. 10) of the Convention. The applicant also considers that, if the notices had to be explained by a letter from the Home Office, then they do not have the requisite precision to comply with Article 10 (Art. 10). He underlines that his membership of the local council results from his membership of Sinn Fein, and states that neither the notices nor the explanatory letter addresses this problem.

The Commission recalls that the European Court of Human Rights has identified at least three requirements which flow from the phrase "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention. The phrase "prescribed by law" in Article 10 para. 2 (Art. 10-2) of the Convention must be interpreted in the same way as the phrase "in accordance with the law" in Article 8 para. 2 (Art. 8-2) of the Convention (Eur. Court H.R., Silver judgment of 25 March 1983, Series A no. 61, p. 33, para. 85). Thus a norm must be formulated with sufficient precision; the phrase "in accordance with the law", or the equivalent phrase "prescribed by law", does not merely refer back to domestic law, but also relates to the quality of the law, and a law conferring a discretion is not in itself inconsistent with the requirement of foreseeability provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity (Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, p. 30, para. 61 with further references).

The Commission notes that there is no contention in the present case that the interference was not in accordance with domestic law, as the House of Lords in the case of Brind ultimately established. As to whether the "law" at issue in the present case has the required "quality", the Commission notes that the authority to make notices is of a general, blanket nature. It sets no limits on the type of

directions the minister may give, and does not require the directions to be made for any particular purpose. The Commission must, however, look not only to the source of the authority for the making of the directions, but also to the directions themselves, as it is the directions which laid down the restrictions which had, and have, to be complied with by broadcasters and thereby affect the applicant.

The Commission recalls that accessibility and foreseeability are two of the requirements inherent in the phrase "prescribed by law" in Article 10 para. 2 (Art. 10-2) of the Convention (see, for example, Eur. Court H.R., Sunday Times judgment of 26 April 1979, Series A no 30, p. 31, para. 49). The accessibility of the directions is not in question in the present case: the source of the authority for the respective notices is generally available, and the notices made by the Home Secretary were announced in Parliament, debated in Parliament, and the subject of widespread comment in the press. As to foreseeability, even if the original notices contained areas of uncertainty, such as the impact on elected individuals speaking on matters unrelated to terrorism, the Commission finds that the subsequent clarification by the Home Office to the broadcasting authorities rendered the scope of the interference apparent to all concerned.

Accordingly, the Commission finds that the interference was "prescribed by law" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

The Commission must next consider whether the interference with the applicant's rights pursued a "legitimate aim". The Government point to the address by the Home Secretary to the House of Commons on 19 October 1988, in which he referred to the restrictions as part of the campaign against terrorism. They recall that Lord Templeman in the House of Lords also recognised this aim. They see the aim of the notices as principally the protection of "the interests of national security" and "the prevention of disorder or crime". The applicant regards the test of the legitimacy of aims under Article 10 (Art. 10) as an objective one. He considers that the Government must show how they expected the measure to protect national security or prevent crime, and adds that there is no evidence that audiences are offended by responsible journalism (and the Home Secretary expressly stated in Parliament that there was no criticism of journalists); that Irish "terrorists" have not been interviewed on British television since 1979; that there is no indication that or how the "standing" of terrorists had been increased, and that "intimidating" statements had been broadcast.

The Commission notes that the restrictions in the present case refer in terms to proscribed organisations and to named organisations which, although not prohibited, are known to have connections with unlawful organisations. The Commission finds no indication that the directions were anything other than part of the measures to combat terrorism which were made in good faith. The Commission accepts that the aim of the restrictions is legitimate.

Finally, the Commission must consider the question of the necessity for the interference with the applicant's Article 10 (Art. 10) rights. The European Court of Human Rights has summarised the major principles of its case-law on the "necessity" test in Article 10 (Art. 10) of the Convention as follows:

> "(a) Freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10 (Art. 10), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Freedom of expression, as enshrined in Article 10 (Art. 10), is subject to a number of exceptions which, however, must be narrowly interpreted and the

necessity for any restrictions must be convincingly established.

(b) These principles are of particular importance as far as the press is concerned. While it must not overstep the bounds set, inter alia, in the `interests of national security' or for `maintaining the authority of the judiciary', it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. were it otherwise, the press would be unable to play its vital role of `public watchdog'.

(c) The adjective 'necessary', within the meaning of Article 10 para. 2 (Art. 10-2), implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The [Convention organs] are therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10 (Art. 10).

(d) The [Convention organs'] task, in exercising [their] supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 (Art. 10) the decisions they delivered pursuant to their power of appreciation. This does not mean that [their] supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what [they have] to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'."

(Eur. Court H.R., Sunday Times (No. 2) judgment of 26 November 1991, Series A no. 217, p. 29, para. 50)

The Government accept that the directions given to broadcasting authorities will not directly reduce the number of terrorist acts in Northern Ireland or in the United Kingdom, but state that they are intended to reduce the impact and influence of the advocates and supporters of such acts, and that they correspond to the need to prevent the giving of overt support for certain organisations. They refer to the Purcell case, where the Commission found that the restrictions were designed to "deny representatives of known terrorist organisations and their political supporters a possibility of using the broadcast media as a platform for advocating their cause, encouraging support for their organisation and conveying the impression of their legitimacy". They consider that, notwithstanding the compliance by broadcasters with their various statutory or contractual duties, interviews were broadcast before the notices were issued which gave terrorists and their apologists a spurious air of authority.

The Government regard the extensive experience of the executive and the legislature of terrorist matters as justifying a greater margin of appreciation than might be the case in other spheres involving restrictions on freedom of expression. They nevertheless point out that the restrictions on the applicant's freedom of expression are less onerous than those in the Purcell case, in that they are very precisely targeted and they do not apply during elections.

The applicant underlines that he is impeded in his work as an elected representative. He refers in particular to the narrow margin of appreciation required by the Court in Castells v. Spain (Eur. Court H.R., Castells judgment of 23 April 1992, Series A no. 236), and again refers to the fact that he is caught by the notices whenever he speaks

as a councillor, because he is a Sinn Fein councillor. He also emphasises that, pursuant to the Elected Authorities (Northern Ireland) Act 1989 he declared that, if elected, he would not lend support to violence.

The Commission notes that the extent of the interference in the present case is limited. Whilst he may be affected by the directions in the way he can broadcast his views on the airwaves, the directions given on 19 October 1988 do not have any impact on the words that can be spoken or the images that can be shown on television or the radio. The Commission has accepted that journalists may be slower to interview councillors who are subject to the restrictions (such as the applicant) than others, but nevertheless finds that as it is the case that whilst the actual words spoken by persons subject to the directions may be broadcast, the directions cannot be seen as having a major impact on the way in which the applicant fulfils his democratic functions.

The Commission recalls that freedom of expression is especially important for an elected representative of the people, and that freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders (Eur. Court H.R., Castells judgment referred to above, pp. 22 and 23, paras. 42 and 43).

Although the Government do not contend that the interference with the applicant's rights is a prime element in the struggle against terrorism, it can be regarded as one aspect of a very important area of domestic policy. The European Court of Human Rights has referred to the special problems involved in combating terrorism (Eur. Court H.R., Brogan and others judgment of 29 November 1988, Series A no. 145, p. 33, para. 61; p. 27, para. 48; Brannigan and McBride judgment of 26 May 1993, Series A no. 258, p. 50, para. 47, with further references), and the Commission has no doubt as to the difficulties involved in striking a fair balance between the requirements of protecting freedom of information - especially the free flow of information from the media - and the need to protect the State and the public against armed conspiracies seeking to overthrow the democratic order which guarantees this freedom and other human rights.

Finally, the Commission notes the findings of the High Court in the present case as to the role of Sinn Fein in the Northern Irish political scene, where Mr. Justice Carswell found that Sinn Fein's "support [for violence] is an intrinsic part of the policy of Sinn Fein". He was satisfied that the notices were aimed at terrorism, and indeed considered that even if members of Sinn Fein were hindered in carrying out political activities by the directions, the Home Secretary's notices still were not unlawful.

The Commission finds, in the circumstances of the present case and bearing in mind the margin of appreciation permitted to States, the limited extent of the interference with the applicant's rights and the importance of measures against terrorism, that it cannot be said that the interference with the applicant's freedom of expression was disproportionate to the aim sought to be pursued.

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.

2. The applicant also alleges a violation of Article 13 (Art. 13) of the Convention. Article 13 (Art. 13) provides as follows.

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls Article 13 (Art. 13) cannot be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention: the grievance must be an arguable one in terms of the Convention. Moreover, the European Court of Human Rights has pointed to the link between the notion of "arguable claim" in its own case-law and the notion of "manifestly ill-founded" in Article 27 (Art. 27) of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, paras. 52 and 54). The Commission has found the applicant's claims under Article 10 (Art. 10) to be manifestly ill-founded. It also finds the claims under Article 13 (Art. 13) to be not arguable.

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

3. Finally, the applicant alleges a violation of Article 14 of the Convention in conjunction with Article 10 (Art. 14+10) of the Convention as the restrictions to which he is subject do not apply to members of other political parties. Article 14 (Art. 14) of the Convention provides as follows.

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that the applicant abandoned his appeal to the Northern Irish Court of Appeal against the decision of Mr. Justice Carswell, so that the question arises whether the applicant has complied with the requirement of Article 26 (Art. 26) of the Convention that he exhaust domestic remedies. However, the Commission does not find it necessary to address this question as the complaint is in any event manifestly ill-founded for the following reasons.

The Commission recalls that whether or not a difference in treatment constitutes discrimination in the sense of Article 14 (Art. 14) depends on whether there exists an objective and reasonable justification. The difference in treatment must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see eg. Eur. Court H.R., Inze judgment of 28 October 1987, Series A no. 126, p. 18, para. 41).

Mr. Justice Carswell in the High Court in Northern Ireland accepted that the directions to the broadcasting authorities were made not in order to prevent the broadcasting of programmes in which particular persons or classes of persons took part, but rather to prevent matter of a particular kind being broadcast. He also found it to be immaterial that a particular speaker may have forsworn support for acts of terrorism "if he represents or expresses support for Sinn Fein, a party whose notorious policy is the support of terrorist violence".

The Commission has above found that the notices issued to the broadcasting authorities pursued a legitimate aim as such. It also finds that the reasons given by Mr. Justice Carswell in the High Court for the application of the broadcasting restrictions to those organisations specified in para. 2(b) of the notices (including Sinn Fein), namely the support given by those organisations to terrorist violence, justify the inclusion of those organisations in the notices.

This part of the application is therefore also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For the these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission	President of the Commission
(H.C. Krüger)	(C.A. Nørgaard)