

# EUROPEAN COURT OF HUMAN RIGHTS

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**Press release issued by the Registrar**

## **JUDGMENTS IN THE CASES OF: HEANEY AND MCGUINNESS v. IRELAND AND QUINN v. IRELAND**

The European Court of Human Rights has today notified in writing judgments<sup>1</sup> in the cases of Heaney and McGuinness v. Ireland and Quinn v. Ireland. In both cases, the Court held unanimously that:

- there had been a **violation of Article 6 § 1** (right to a fair trial) **and 6 § 2** (presumption of innocence) of the European Convention on Human Rights,
- that no separate issue arose under Articles 8 (right to respect for private life) or 10 (right to freedom of expression) of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the three applicants 4,000 Irish pounds (IEP) each in respect of non-pecuniary damage, a total of IEP 9,377.50 for costs and expenses to the two applicants in Heaney and McGuinness v. Ireland and IEP 11,341.08 to the applicant in Quinn v. Ireland (less 5,000 French francs, in each case, paid by in legal aid).

### **1. Principal facts**

The applicants, all Irish nationals, are: Anthony Heaney, born in 1955 and currently in Portlaoise Prison, County Laois; William McGuinness, born in 1956 and living in County Derry; and, Paul Quinn, born in 1973 and living in Limerick.

All three applicants were arrested on suspicion of serious terrorist offences. After having been cautioned by police officers that they had the right to remain silent, they were requested under section 52 of the Offences Against the State Act 1939 (section 52) to give details about their movements at the time of the relevant offences.

Mr Heaney and Mr McGuinness refused to answer any questions. They were charged with membership of an illegal paramilitary organisation and of failing to account for their movements. They were acquitted of the first offence but convicted of the second and sentenced to 6 months' imprisonment.

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Mr Quinn denied any connection with the events about which he was questioned and refused to give an account of his movements. He was charged under section 52 with refusing to give an account of his movements and sentenced to six months' imprisonment.

In *Heaney and McGuinness v. Ireland*, the Supreme Court rejected a challenge to the constitutionality of section 52 and the applicants' appeals against their convictions were adjourned pending the outcome of their applications to the European Court of Human Rights.

## **2. Procedure and composition of the Court**

The applications were lodged with the European Commission of Human Rights on 17 January 1997 and 6 March 1997 respectively and the cases transmitted to the European Court of Human Rights on 1 November 1998. On 21 September 1999 the Court declared admissible the complaints in *Heaney and McGuinness v. Ireland* and the complaints under Articles 6 and 10 in *Quinn v. Ireland*.

Judgment was given by a Chamber of seven judges, composed as follows:

Georg **Ress** (German), *President*,  
Antonio **Pastor Ridruejo** (Spanish),  
Lucius **Caflich**<sup>1</sup> (Swiss),  
Ireneu **Cabral Barreto** (Portuguese),  
Volodymyr **Butkevych** (Ukrainian),  
Nina **Vajić** (Croatian),  
Matti **Pellonpää** (Finnish), *judges*,

and also Vincent **Berger**, *Section Registrar*.

## **3. Summary of the judgment<sup>2</sup>**

### **Complaints**

The applicants complained that their conviction and imprisonment under section 52 constituted a violation of their rights guaranteed under Article 6 §§ 1 and 2 and Article 10 of the Convention. Mr Heaney and Mr McGuinness also alleged that their right to a private life (Article 8) had been infringed.

### **Decision of the Court**

#### Article 6 §§ 1 and 2

#### Applicability

The Court found that the applicants had been "charged" for the purposes of Article 6, even though Mr Quinn was not charged with a substantive offence and Mr Heaney and Mr McGuinness had not been formally charged when the section 52 requests were made. The

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<sup>1</sup> Judge elected in respect of Liechtenstein.

2. This summary by the Registry does not bind the Court.

Court recalled that a person could be considered to have been “charged” for the purposes of Article 6 § 1 when that individual’s situation had been “substantially affected”. The Court considered that the applicants had been “substantially affected” in that sense, and had therefore been “charged” with membership of the IRA contrary to the 1939 Act and of some involvement with the offences in question.

While in general acquittal or the lack of substantive proceedings would preclude an applicant from claiming to be the victim of a violation of the procedural guarantees of Article 6, the Court had previously found violations of Article 6 § 2 in the absence of conviction. In the present cases, if the applicants had been unable to invoke Article 6 §§ 1 and 2, it would mean that acquittal or the lack of substantive proceedings (in Mr Quinn’s case) prevented any consideration of their complaints that they had been punished, prior to their acquittal or the decision not to issue proceedings, for having defended what they considered to be their rights under Article 6 of the Convention. That would not be consistent with the need to interpret the Convention in such a way as to guarantee rights that are practical and effective as opposed to theoretical and illusory. Paragraphs 1 and 2 of Article 6 were therefore applicable.

### Compliance

The Court found that the safeguards referred to by the Government could not effectively and sufficiently reduce the degree of compulsion imposed by section 52, to the extent that the essence of the rights at issue would not be impaired, since the choice between providing the information or facing imprisonment remained.

Moreover, the legal position as to the admissibility in evidence of any answers given was particularly uncertain at the time and the applicants were initially given the standard caution. The degree of compulsion imposed by the application of section 52 in effect destroyed the very essence of the privilege against self-incrimination and the right to remain silent.

The security and public order concerns invoked by the Government could not justify a provision with this effect and there had therefore been a violation of the applicants’ right to silence and their right not to incriminate themselves guaranteed by Article 6 § 1. Moreover, given the close link with the presumption of innocence guaranteed by Article 6 § 2, there had also been a violation of that provision.

*Conclusion:* violation (unanimously).

### Articles 8 and 10

The Court considered that no separate issue arose under these provisions.

*Conclusion:* no separate issue (unanimously).

### Article 41

The Court awarded the three applicants IEP 4,000 each in respect of non-pecuniary damage, a total of IEP 9,377.50 for costs and expenses to the two applicants in Heaney and McGuinness v. Ireland and IEP 11,341.08 in Quinn v. Ireland (less 5,000 French francs, in each case, paid in legal aid).

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*