AS TO THE ADMISSIBILITY OF

Application No. 21624/93
by Patrick O'REILLY
against Ireland

The European Commission of Human Rights (First Chamber) sitting in private on 31 August 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

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

Having regard to the application introduced on 24 September 1992 by Patrick O'REILLY against Ireland and registered on 6 April 1993 under file No. 21624/93;

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 5 April 1994 and the observations in reply submitted by the applicant on 3 June 1994;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case as submitted by the parties may be summarised as follows.

The applicant is an Irish citizen born in 1957 and is currently serving a sentence of imprisonment at Cork Prison. He is represented before the Commission by Mr. Noel Forde, a solicitor practising in East Cork.

A. Particular circumstances of the case

On 12 December 1984, the applicant was arrested pursuant to section 30 of the Offences Against the State Act, 1939 ("the 1939 Act"), on suspicion of having committed a scheduled offence under the 1939 Act. The applicant made a statement while in custody admitting his participation in the crime.

On 13 December 1984 and on 18 January 1985, the applicant was charged with burglary and murder respectively both of which charges arose out of the same event.

On 25 January 1985 the applicant was released on bail.

On or about 24 April 1985, the Book of Evidence, in respect of

both charges, was served on the applicant and a number of witness statements were taken on deposition in May 1985.

In June 1985, the case was pronounced ready for trial and the applicant was returned for trial to the Central Criminal Court ("the C.C.C."). In July 1985, the applicant's trial date was fixed by the C.C.C. for 2 December 1985.

On 29 November 1985 the Director of Public Prosecutions ("D.P.P."), applied for and obtained an order separating the murder and burglary proceedings and the trial of the burglary charge was adjourned. Counsel for the applicant did not oppose the separation of the two proceedings nor the consequent adjournment of the trial on the burglary charge.

1. The Murder Proceedings.

On 2 December 1985, at the trial in the C.C.C., the applicant successfully challenged the admissibility of the statement made by him while in custody. The statement was ruled inadmissible on the basis that the power of arrest and detention given pursuant to section 30 of the 1939 Act applied only to offences with a subversive element which was not present in the particular circumstances of the case. Since the D.P.P. had no other evidence against the applicant the judge directed the jury to record a verdict of not guilty of murder and the applicant was discharged.

On 25 and 26 February 1986 the Supreme Court heard the appeal of the D.P.P.. It was the first ever appeal against an acquittal but the judgment of the C.C.C. (as it then stood) would have had a large impact on police powers of arrest and on others arrested and detained pursuant to Section 30 of the 1939 Act. The issues of law before the Supreme Court on this occasion were similar to those dealt with in the C.C.C..

On 25 July 1986 the Supreme Court delivered its judgment, reversing the trial judge's ruling, holding that section 30 applied to any offence scheduled in the 1939 Act whether or not motivated by any subversive intent.

On 16 December 1986, pursuant to that reversal, the D.P.P. sought, by Notice of Motion to the Supreme Court, liberty to re-try the applicant on the murder charge. This was the first ever application to direct the re-trial of a person on a murder charge.

On 3 February 1987, the written submissions of the D.P.P. were delivered. Pursuant to an application by the D.P.P. on 4 June 1987, the applicant delivered his replying submissions on or about the 17 June 1987. The issues before the Supreme Court this time included questions as to whether the Supreme Court could order a re-trial under the rules of the courts or pursuant to a particular statutory provision. The constitutionality of the aforementioned statutory provision was also in issue.

On 21 July 1987 the Supreme Court hearing on the application to re-try the applicant took place. On 29 July 1988 the Supreme Court refused the motion to re-try the applicant.

2. The Burglary Proceedings.

The applicant's trial for burglary had been adjourned from time to time since November 1985 while the murder proceedings were in progress. The applicant did not object to such adjournments nor apply to have the burglary trial proceeded with.

On the 4 October 1988 the matter came before the C.C.C. for mention, for the first time since the conclusion of the proceedings in respect of the murder charge, when it was adjourned "by consent" of

both parties. The trial was subsequently adjourned twice "by consent" of both parties until 17 April 1989 when a trial date was fixed for 20 May 1989.

On the 1 May 1989 the D.P.P. applied for, and the applicant opposed, another adjournment. The adjournment was granted and the trial was fixed for hearing on 27 June 1989. On the trial date the case was adjourned until the following day, when the D.P.P. applied for, and the applicant consented to, another adjournment for several weeks due to the sudden illness of a prosecution witness.

The trial eventually commenced on the 31 October 1989. On the 16 November 1989 the applicant was found guilty and was sentenced to 8 years imprisonment.

By notice dated 8 December 1989 the applicant appealed his conviction. However it took until February 1991 before the necessary transcript of evidence of the burglary trial was received and approved by the trial judge.

There is a conflict on the facts in respect of the next developments in the case.

> The Government claim that the applicant's solicitor was not contactable "for some considerable time" after February 1991 resulting in the applicant's Books of Appeal not being delivered until October 1991 when they should have been delivered by February 1991.
>
> The applicant submits that his solicitor contacted the Supreme Court office prior to March 1991 in order to let that office know his new address as the applicant's solicitor had moved his practice. The applicant further submits that his solicitor became aware of the availability of the C.C.C.'s transcript in March 1991 and was informed by the Supreme Court office that further documentation would be required for the appeal. It is further confirmed by the applicant that the applicant's paperwork for the appeal was in order by July 1991 at which time the applicant realised that an amendment was required to the Notice of Appeal. Due to the court vacation (August and September) the relevant application for leave to amend could not be made until October 1991 at which time the applicant's application to amend his Notice of Appeal was successful. The applicant's Books of Appeal were delivered shortly thereafter in October 1991.

The case appeared in the Supreme Court list from September 1991 awaiting a hearing date.

On 11 and 12 February 1992 the applicant's appeal against conviction on the burglary charge was heard by the Supreme Court and judgment was given against him on 14 July 1992. There was a wide range of issues raised before the C.C.C. and the Supreme Court in the hearings on the burglary charge including the constitutionality of Section 30 of the 1939 Act, the length of the proceedings, the separation of the two charges, the trial judges findings on the admissibility of the applicant's alleged statement and the directions given to the jury by the trial judge.

On 30 July 1992 the applicant's appeal against sentence was heard by the Supreme Court and rejected.

During the period of the above hearings the applicant was detained from the date of his arrest, 19 November 1984, to 25 January 1985 when he was released on bail. He was again detained for four days during the C.C.C. trial in December 1985. He was not detained again until his conviction on the burglary charge in November 1989 and he remains in prison to date.

B. Relevant domestic law and practice

Separation of Proceedings.

In 1985, the possibility of including a number of charges (one being murder) on the same indictment was a relatively recent phenomenon in Ireland.

Prior to 1924 it was not possible to combine any charges on the same indictment regardless of the nature of the charges. The Criminal Justice (Administration) Act, 1924 made it possible to combine a number of charges, however, a murder charge could still not be combined with another charge on the same indictment. Subsequently, the Supreme Court, held in 1977 that it was possible ("not improper") for other counts to be joined with murder.

This ruling of the Supreme Court meant that when the application was made in 1985 by the D.P.P. to separate both sets of proceedings the court had the option of granting the separation or not. The application of the D.P.P. was made in order to relieve the defence, the jury and the prosecution from the additional burden imposed by the less serious charge of burglary in order to allow those persons to concentrate on the murder charge.

The issue of the separation of the two charges was raised by the applicant as a ground of appeal to the Supreme Court in the burglary proceedings. Finlay C.J. noted in this regard:

> "No opposition to this separation of the two counts on the indictment was made on behalf of this Appellant in December 1985. There are strong grounds of policy to be found in a number of decisions in favour of not trying with the charge of murder a count of other crimes arising out of the same transaction even though that is not an inflexible or mandatory prohibition. No grounds have been advanced which in my view would suggest that the decision to separate the counts on that occasion was in any way unfair to the Appellant."

COMPLAINTS

The applicant complains that the length of the proceedings against him exceeded the reasonable time requirement provided for in Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The applicant's solicitor wrote to the Commission, by letter dated 24 September 1992, requesting an application form in respect of a sentence of imprisonment which had been imposed on the applicant and in respect of which the applicant claimed a violation of his human rights. Subsequently the Commission received, by fax, on 28 January 1993 the relevant facts in detail together with a list of the applicant's complaints including a general complaint under Article 6 of the Convention. The completed application form was received by the Commission on the 29 March 1993 and was registered under No. 21624/93 on 6 April 1993.

On 11 January 1994, the Commission declared inadmissible part of the application and decided to communicate the question concerning length of proceedings under Article 6 para. 1 of the Convention to the respondent Government and to ask for written observations on the admissibility and merits of this question.

The Government's observations were submitted on 5 April 1994 after one extension in the time-limit fixed for this purpose, and the applicants' observations in reply were submitted on 3 June 1994, also

after one extension in the time-limit.

On 17 May 1994, the Commission decided to grant legal aid to the applicant.

THE LAW

The applicant complains about the length of criminal proceedings against him under Article 6 para. 1 (Art. 6-1) of the Convention.

The Government raise various arguments against the admissibility of the applicant's complaint and on the merits.

Article 26 (Art. 26) of the Convention.

The Government argue that the applicant's initial letter of the 24 September 1992 did not constitute an application to the Commission but rather a request for an application form and that the more detailed second letter of the applicant, dated 27 January 1993, was received by the Commission on 3 February 1993. Thus the Government submits that the applicant failed to introduce his application within the six month time limit imposed by Article 26 (Art. 26) of the Convention.

The Commission notes that it does not have to deal with the question of the status of the letter of 24 September 1992 because the detailed letter outlining the facts of the case and the broad complaints of the applicant (dated 27 January 1993) was received by fax on 28 January 1993. Thus the Commission finds that the application was introduced at the latest on the 28 January 1993 which was within six months of the final decision, given on 30 July 1992, when the Supreme Court delivered its judgment on the applicant's appeal against sentence.

No specific complaint made by the applicant under Article 6 para. 1 (Art. 6-1) of the Convention.

The Government submit that no specific complaint was made as to the length of proceedings, or indeed under Article 6 para. 1 (Art. 6-1) of the Convention, in the applicant's initial letters or in the application form submitted by the applicant. The Government also argue that even if the Commission can consider issues other than those raised by the applicant then it must do so within six months of the date of the final decision. It is therefore contended by the Government that the decision by the Commission to deal with the issue under Article 6 para. 1 (Art. 6-1) of the Convention is inconsistent with Articles 25 and 26 (Art. 25, 26) of the Convention.

The Commission recalls that it may examine whether or not the facts submitted disclose a violation of the Convention even if the applicant has not complained about an issue directly (Eur. Court H.R. Neumeister judgment of 27 June 1968, Series A no. 8, p. 41 para. 16). In addition the Commission recalls, that in the performance of its tasks, it is free to attribute to the facts of the case, as found to be established on the evidence before them, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner (Eur. Court H.R., Foti judgment of 10 December 1982, Series A no. 52. p. 15, para. 44).

In this regard the Commission notes that the fax received on 28 January 1993, within the six month time limit, set out the relevant facts concerning the criminal proceedings against the applicant in some detail and made a general claim in relation to Article 6 (Art. 6) of the Convention. The Commission therefore finds that it may examine whether the proceedings against the applicant disclose a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as it is relevant, reads as follows:

> "1. In the determination .... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...."

The criminal proceedings against the applicant, which commenced on 13 December 1984 and terminated with the judgment of the Supreme Court of 30 July 1992, lasted in total over 7 years and 7 months.

The applicant contends that the length of time in question cannot be regarded as reasonable. The Government submit that the proceedings did not, in all the circumstances, exceed a reasonable period of time having regard in particular to the exceptional complexity and importance of the substantive and procedural issues which arose in both sets of proceedings and to the conduct of the applicant in those proceedings.

According to the constant case-law of the Convention organs the reasonableness of the length of proceedings under Article 6 para. 1 (Art. 6-1) of the Convention has to be assessed in each case in light of the particular circumstances of the case and by applying the following criteria: the complexity of the issues in the case, the conduct of the applicant and the conduct of the competent authorities.

Applying these criteria, and having regard to the circumstances of the case as they have been submitted by the parties, the Commission considers that the complaint raises serious issues of fact and law which are of such complexity that their determination should depend on an examination of the merits. The application cannot therefore be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

No other ground for declaring the application inadmissible has been established.

For these reasons, the Commission, unanimously,

DECLARES THE REMAINDER OF THE APPLICATION ADMISSIBLE without prejudging the merits.

Secretary to the First Chamber — President of the first Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)