CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39511/98
by Martin McGUINNESS
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 8 June 1999 as a Chamber composed of

Mr J-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, J*udges*,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 October 1997 by Martin McGUINNESS against the United Kingdom and registered on 23 January 1998 under file no. 39511/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Irish citizen, born in 1950 in Northern Ireland. He is an elected member of the United Kingdom Parliament, representing Sinn Féin. He lives in Derry, Northern Ireland.

The applicant is represented before the Court by Mr Michael Flanigan, a solicitor practising in Belfast.

A. The particular circumstances of the case

The facts as submitted by the applicant may be summarised as follows.

In the General Election held on 1 May 1997 the applicant was elected Member of Parliament ("MP") for the Mid-Ulster constituency in Northern Ireland. His party, Sinn Féin, which polled 16.1% of the votes cast in Northern Ireland in the General Election, is an Irish republican political party committed to the principle that the Irish people have the right to self-determination.

The applicant made known to his constituents during the electoral campaign that, in line with official Sinn Féin policy, he would not take the oath of allegiance ("the oath") to the British monarchy which MPs are required to swear as a condition of taking their seats in Parliament. The applicant did, however, affirm that he would attend the Palace of Westminster, the seat of Parliament, in order to avail himself of the normal facilities afforded to MPs, namely office accommodation, staff allowances, research facilities, travel allowances, broadcasting services and access to restricted areas for the purpose of making informal contact with other MPs. It was the applicant's understanding that elected members who did not take the oath were nonetheless entitled to benefit from these services.

The oath, as set out in section 1 of the Parliamentary Oaths Act of 1866 ("the 1866 Act"), amended by sections 2, 8 and 10 of the Promissory Oaths Act of 1868, is as follows:

> "I [name] do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors, according to law. So help me God."

On 14 May 1997 the Speaker of the House of Commons ("the Speaker") made the following Statement to the House:

> "This House has traditionally accommodated great extremes of opinion. I am sure therefore that the House would not wish to put any unnecessary obstacle in the way of Members wishing to fulfil their democratic mandate by attending, speaking and voting in the House. Equally, I feel certain that those who choose not to take their seat should not have access to the many benefits and facilities that are now available in the House without also taking up their responsibilities as Members.
>
> The present position is that under the terms of the Parliamentary Oaths Act 1866, any Member who fails to take the oath or make the affirmation that is required by law and who then votes or sits during any debate after the election of the Speaker is subject to a penalty of [GBP] 500 on each occasion and his or her seat is automatically vacated.

> In 1924 one of my predecessors ruled that any such Member could not receive a salary and this regulation also applies to allowances.
>
> In the interests of the House and making use of the power vested in the Speaker to control accommodation and services in the Commons parts of the Palace of Westminster and the precincts, I have decided to extend these restrictions. As from the date of the end of the Queen's speech the services that are available to all other Members from the six departments from the House and beyond will not be open for use by Members who have not taken their seats by swearing or by affirmation ... .”

On 19 May 1997 the applicant travelled to Westminster together with Mr Gerry Adams, the other Sinn Féin MP elected at the 1997 General Election and leader of the party. They were officially informed that they would be barred from using any services or facilities if they did not take the prescribed oath.

On 4 July 1997 Mr Adams wrote to the Speaker requesting her to review her decision. The Speaker replied on 8 July 1997 stating that her decision stood for the reasons set out in the Statement.

On 12 August 1997 the applicant applied to the High Court of Justice of Northern Ireland for leave to apply for judicial review of the Speaker's decision and for a declaration that the 1866 Act, in so far as it required him to swear or affirm allegiance to the British monarchy, was incompatible with his constitutional rights as an MP. Mr Justice Kerr heard the application on 1 October 1997.

On 3 October 1997 Mr Justice Kerr refused the application. As to the applicant's challenge to the Speaker's authority to extend the restriction on facilities and services, the judge ruled that the Speaker was acting as a delegate of the House and on behalf of the House. Furthermore, he pointed out that the government of the day decided in March 1965 that the control of the accommodation and services in the House of Commons and its precincts should be vested in the Speaker on behalf of the House. The judge further ruled that he was:

> “quite satisfied that ... the Speaker's action lies squarely within the realm of internal arrangements of the House of Commons and is not amenable to judicial review. Control of its own internal arrangements has long been recognised as falling uniquely within Parliament's domain and superintendence from the Court's intervention is excluded ... .”

As to the applicant's challenge to the validity of the 1866 Act Mr Justice Kerr ruled that, being primary legislation, the court did not have jurisdiction to review it.

As to the applicant's claim that the Speaker's action was not a “proceeding” under Article 9 of the Bill of Rights 1869, the judge did not rule on the matter, but he said that if it had been necessary for him to do so, he would have held that the Speaker's decision to introduce the restrictions was a proceeding in Parliament and so could not be challenged by way of judicial review under Article 9 of the Bill of Rights of 1869 (see domestic law and practice below).

The applicant did not appeal to the Court of Appeal, following advice from counsel that an appeal would be to no avail.

On 4 December 1997 the Speaker met with the applicant and Mr Adams, and refused once again to reconsider her decision to restrict facilities and services of Parliament to members who had not taken the oath.

B. Relevant domestic law and practice

Appended to the Official Report for 14 May 1997 following the Statement of the Speaker was a list of services to which the new regulations apply, including: legal services, procedural services (including the tabling of questions, motions and amendments, and public petitions), broadcasting services, Vote Office services, services available from the Parliamentary Office of Science and Technology, the provision of passes, special permits and car parking facilities, access to those areas within the parliamentary precincts which are open only to pass holders, the booking of Committee rooms, conference rooms and interview rooms, office accommodation services for members and their staff, computer services, except those available to the public, the allocation of Gallery tickets, the sponsoring of exhibitions in the Upper Waiting Hall, members' medical services, library and research services, except for those services of the Public Information Office generally available to the public, services provided by the Official Report, payroll and other financial services provided to members and their staff, insurance services, catering services provided for members and their staff, including the sponsoring of banqueting services, police and security advice available within the precincts, services in the members' post offices and travel services.

Article 9 of the Bill of Rights of 1869 provides that:

> "... the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

In *Bradlaugh v. Gossett* (1884) 12 Q.B.D. 271, also involving a challenge to the Parliamentary Oath Act of 1866, the court held that the matter related to the internal management of the procedure of the House of Commons and that the court had no power to interfere with the MPs' decision to exclude the plaintiff from the House. In the case of *Prebble v. Television New Zealand* (1995) 1 A.C. 321, the Privy Council ruled:

> "In addition to Article 9 itself, there is a long line of authority which supports a wider principle ... that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges."

COMPLAINTS

The applicant claims that the requirement to take an oath of allegiance to the British monarch is an unjustified interference with his right to freedom of expression guaranteed under Article 10 of the Convention. He asserts that his refusal to comply with the requirement has meant that he has been denied access to facilities available to elected representatives with the result that he has been seriously impeded in exercising his right to express the views of his constituents and party.

The applicant further maintains that the oath is repugnant to his religious beliefs in that it obliges him, a Roman Catholic, to swear allegiance to a monarch who is by law prohibited from being Roman Catholic or from marrying a Roman Catholic. He invokes Article 9 of the Convention in this respect.

The applicant also alleges a violation of Article 13 of the Convention, arguing that he has no effective remedy to seek redress in respect of his complaints under Articles 9 and 10.

In addition, the applicant claims that the Speaker's Statement, introducing new restrictions on the rights of elected representatives who do not comply with the oath requirement, violates Article 3 of Protocol No. 1 since it prevented him from properly representing the opinions of his constituents, thereby denying them the free expression of their opinion.

Finally, the applicant submits that the Speaker's Statement, announced two weeks after his election and in the knowledge that the applicant did not intend to take the oath, was a discriminatory measure in breach of Article 14 of the Convention in conjunction with Articles 9, 10 and Article 3 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant alleges that the requirement to take an oath of allegiance to the British monarchy constitutes a violation of his right to freedom of expression under Article 10 of the Convention. This provision reads, in relevant part:

> "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."

In the applicant's submission, as a member of Sinn Féin and an elected representative of that party, the prescribed oath of allegiance is repugnant to his political beliefs and the republican principles which underpin Sinn Féin's policies. By not subscribing to the oath he is prevented from taking his seat in the House of Commons and, in view of the Speakers' Statement, has been denied access to a range of facilities which seriously impede the exercise of his right to express and promote his own views, as well as those of his party and the constituents who elected him.

The Court recalls that while freedom of expression is important for everybody, it is especially so for the elected representatives of the people. They represent their electorate, draw attention to their constituents' preoccupations and defend their interests (see, *mutatis mutandis*, the Castells v. Spain judgment of 23 April 1992, Series A no. 236, pp. 22-23, § 42).

In the instant case the applicant contends that the requirement to take an oath of allegiance to the British monarchy effectively restricts his right to impart information in the interests of his constituents and his party within the setting of the House of Commons and that that restriction has been further compounded by the withdrawal of facilities in the precincts of the House which are accessible to other MPs. While noting that the applicant freely contested the election in complete knowledge of the fact that he could only take his seat in the House provided that he complied with the oath requirement and evinced a clear intention not to do so, the Court will nevertheless consider whether the existence of the impugned requirement had an unjustified inhibiting effect on his free speech rights as an elected representative so as to disclose an appearance of a violation of Article 10 of the Convention.

Against that background, the Court recalls that any interference with the right to freedom of expression cannot be justified unless it is "prescribed by law", pursues one or more legitimate aim or aims as defined in Article 10 § 2 of the Convention and is "necessary in a democratic society" to attain them.

For the Court the measures impugned by the applicant had a clear legal basis in the domestic law and parliamentary practice and procedure of the respondent State, namely section 1 of the 1866 Act as regards the oath requirement and the Speaker's Statement of 14 May 1997 as regards the denial of House of Commons' facilities to MPs who refuse to take the oath. As to the latter ruling the Court observes that in the application for judicial review proceedings Mr Justice Kerr found that the authority to regulate, *inter alia*, the services of the House was lawfully vested in the Office of Speaker.

Turning to the legitimacy of the aim or aims pursued by the measures at issue, the Court recalls that in its Ahmed and Others v. the United Kingdom judgment of 2 September 1998 (in *Reports of Judgments and Decisions* 1998-VI), the Court acknowledged that the expression "the protection of the rights of others" contained in Article 10 § 2 of the Convention could embrace the protection of effective democracy (p. 2376, § 52). In its view, this term must equally extend to the protection of the constitutional principles which underpin a democracy. It notes that the requirement in the respondent State that elected representatives take an oath of allegiance to the monarch is incorporated in a legal rule dating back to 1866. This rule forms part of the constitutional system of the respondent State, which, it is to be observed, is based on a monarchical model of government. For the Court, the requirement that elected representatives to the House of Commons take an oath of allegiance to the reigning monarch can be reasonably viewed as an affirmation of loyalty to the constitutional principles which support, *inter alia*, the workings of representative democracy in the respondent State (see, *mutatis mutandis*, the Vogt v. Germany judgment of 26 September 1995, Series A no. 323, p. 28, § 59). In the Court's view it must be open to the respondent State to attach such a condition, which is an integral part of its constitutional order, to membership of Parliament and to make access to the institution's facilities dependent on compliance with the condition.

As to the necessity of the impugned measures, the Court considers that the applicant cannot claim with justification that they have a disproportionate effect on his right to freedom of expression. It recalls that the oath requirement can be considered a reasonable condition attaching to elected office having regard to the constitutional system of the respondent State. Moreover, it observes that the applicant voluntarily renounced his right to take his seat in the House of Commons in line with his own political beliefs. Although denied access to services

and facilities in the precincts of the House of Commons, there is nothing to prevent the applicant from expressing the views of his constituents and party in other contexts including meetings outside the House of Commons with the participation of government ministers and MPs.

Having regard to the above considerations, the Court concludes that it is not open to the applicant to complain under Article 10 of the Convention as regards either the oath requirement or the denial of services and facilities on account of his refusal to take the oath.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant alleges that his right to freedom of thought, conscience and religion has been violated on account of the fact that his entitlement to use parliamentary facilities is made conditional on the taking of the prescribed oath. He relies on Article 9 of the Convention which reads, in relevant part:

> "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

The applicant submits, *inter alia*, that to take the prescribed oath of allegiance to the British monarchy would offend his religious beliefs. He asserts that he is a Roman Catholic and that under the law of the respondent State Roman Catholics are debarred from acceding to the throne.

The Court reiterates that it would be contradictory to made the exercise of a mandate intended to represent different views of society within Parliament subject to a declaration of commitment to a particular set of beliefs (see the Buscarini and Others v. San Marino judgment of 18 February 1999, to be published in *Reports* 1999, § 39). In the instant case, however, the applicant was not required under the 1866 Act to swear or affirm allegiance to a particular religion on pain of forfeiting his parliamentary seat or as a condition of taking up his seat; neither was he obliged to abandon his republican convictions or prohibited from pursuing them in the House of Commons.

For these reasons the Court considers that the applicant's complaint under this head is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. The applicant submits that his rights under Article 3 of Protocol No. 1 to the Convention have been infringed in that the conditions under which the parliamentary elections of May 1997 were held did not ensure the free expression of the opinion of the people in the choice of the legislature. He states that the bar placed on his access to the facilities of the House of Commons on account of his refusal to take the prescribed oath of office has prevented him from properly representing the interests of his constituents. Article 3 of Protocol No. 1 reads:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The Court recalls that in their internal legal orders, the Contracting States have a wide margin of appreciation in subjecting the rights to vote and stand for election to prescribed conditions. However it must satisfy itself that any such conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness, that they are imposed in pursuit of a legitimate aim, and that the means employed are not disproportionate. In particular, such conditions must not thwart "the free expression of the opinion of the people in the choice of legislature" (see, mutatis mutandis, the Mathieu-Mohin and Clerfayt v. Belgium judgment of 2 March 1987, Series A no. 113, p. 23, § 52).

The Court notes that Sinn Féin voters in the Mid-Ulster constituency enjoyed the same rights to vote and the right to stand for election on the same legal footing as voters of other political persuasions. They are in no way deprived of those rights on account of the fact that the applicant, the Sinn Féin candidate, had to take the oath as a condition of taking his seat if elected. They voted for him in full knowledge of this requirement, which the Court has earlier found to be a reasonable one attaching to parliamentary office.

As to the applicant's argument that by being denied access to the services and facilities of the House of Commons he is prevented from raising issues of concern to his constituents with relevant ministers and departments as well as with other MPs, the Court observes once again that he is not prevented from carrying out any of these activities. The applicant can make his opinions or those of his party and constituents known without access to the services and facilities listed in the May 1997 addendum to the 1866 Act. For this reason the Court does not accept the applicant's argument that his election rights, or those of his constituents, have been further compromised by being prevented access to services and facilities which are accessory to his core function in the House of Commons and which he has voluntarily renounced.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

4. The applicant alleges that the respondent State has breached Article 14 of the Convention by failing to secure his enjoyment of his rights under Articles 9, 10, and Article 3 of Protocol No. 1, without being discriminated against on grounds of his religion, political opinion and national origin. Article 14 reads as relevant:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... religion, political or other opinion, national ... origin ... or other status."

The applicant alleges that the Speaker's Statement was issued just two weeks after his election as a direct response to his pledge not to take up his seat in the House of Commons if elected. In his submission the Statement pursued a discriminatory purpose. He also points out that the 1886 Act had a disproportionate effect on the elected representatives of Sinn Féin in view of the party's opposition to the oath.

As to the scope of the guarantee provided under Article 14, the Court recalls that according to its established case-law, a difference in treatment is discriminatory if "it has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and

the aim sought to be realised". Moreover, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see, for example, the Larkos v. Cyprus judgment of 18 February 1999, to be published in *Reports* 1999, § 29).

The Court observes that the oath requirement and the terms of the Speaker's Statement applied to all elected representatives without distinction. While the effects of these measures may have weighed more heavily on Sinn Féin members this is to be explained in terms of that party's own official policy on the oath requirement. The Court also recalls that in the context of the applicant's complaint under Article 10 of the Convention it found that the measures at issue could be considered a proportionate response taken in furtherance of a legitimate aim. That reasoning equally serves to lead it to conclude that there is no appearance of a violation of the Convention under this head of complaint either.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

5. The applicant alleges, finally, that he has no effective remedy before a national authority and that his rights under Article 13 have therefore been infringed. Article 13 provides:

> "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 Court reiterates that Article 13 guarantees the availability of a remedy at a national level to enforce – and hence to allege non-compliance with – the substance of Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. However, Article 13 cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the Convention (see the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

The Court notes that it has rejected the applicant's complaints under Articles 9, 10 and Article 3 of Protocol No. 1 as being manifestly ill-founded. For this reason, the applicant cannot assert that he has an arguable grievance which he can assert for the purposes of Article 13 of the Convention. His complaint under this head is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

J.-P. Costa
President