

## THE FACTS

A. Whereas the basic facts originally presented by the applicant may be summarised as follows:

The applicant who is a stateless person holding a Swedish alien's passport, was born in 1925 and is at present detained in Portlaoise Prison.

On 6th November, 1966, the applicant was arrested in Scotland on suspicion of having murdered in Ireland in October, 1965, one James MacPartland. The applicant was then delivered into the custody of the Gárda Síochána and taken to Ireland. He complained that being a stateless person he could not lawfully be "extradited" from Scotland to Ireland.

On 21st April, 1967 the applicant was convicted of murder at the Central Criminal Court in Dublin and sentenced to penal servitude for life. The applicant claimed that his trial was "rigged and fixed" as a result of a conspiracy between the judge, Mr. Justice K, his own counsel and the prosecution counsel, in order to obtain a conviction although the applicant was innocent. He accused the judge of bias and of having gravely misconducted the proceedings and alleged that his conviction was based on insufficient and perjured evidence.

His application for leave to appeal was refused by the Court of Criminal Appeal on 26th July, 1967. On 25th October, 1967, the Court of Criminal Appeal considered an application from the applicant for a certificate pursuant to Section 9 (29) of the Courts of Justice Act, 1924, to enable the applicant to take an appeal to the Supreme Court on the grounds that the decision of the Court of Criminal Appeal of 26th July, 1967, involved a point of law of exceptional public importance and that it was desirable in the public interest that an appeal should be taken to the Supreme Court. The point of law concerned was that the cause of death had not been proven at the trial and that the trial judge had misdirected the jury on one part of his charge. The Court of Criminal Appeal refused, however, to grant the certificate.

On 24th November, 1967, the applicant appeared before the Supreme Court claiming a right of appeal against the decision of the Court of Criminal Appeal, but was informed by the Supreme Court that no such right of appeal existed in the absence of a certificate.

On the same date the applicant appeared in the High Court seeking an order of habeas corpus pursuant to Article 40, Section 4, sub-section (2), of the Constitution. This application was refused by the High Court and later on the same day the applicant appealed to the Supreme Court against this refusal on the grounds that he had not been properly brought before the trial court which therefore had not jurisdiction to try him and that he had not been tried in due course of law because of the alleged conspiracy. On 11th November, 1968 the Supreme Court held that the applicant was being detained in accordance with the law and dismissed his appeal.

The applicant submitted that when he tried to raise arguments before the Supreme Court relating to his trial, he was informed that the Court was only interested in hearing arguments concerning the lawfulness of his detention. Nevertheless, the Court in its judgment discussed his complaints regarding the trial but found that the applicant had not produced any evidence to support his allegations though he had in fact been prevented from producing such evidence.

In May, 1968, the applicant applied to the Court of Criminal Appeal to re-hear his application for leave to appeal on the ground of new evidence. On 26th May, 1968 the Court held that it had no jurisdiction to re-open these proceedings. The applicant contended that the Court,

in fact, was competent to do so, and he referred in that respect to an English precedent.

On 26th March, 1968, the applicant handed to the prison authorities an appeal addressed to the President of the Republic. When it had been photocopied by the Prison Governor, the petition was according to the applicant transmitted to the "Prison Secretary". When the applicant asked to see the registration slip to ascertain that the appeal had been properly dispatched, he was informed on 5th April, 1968, by the Governor that his appeal had been returned and permission to have it transmitted to the President's Office refused by the Prison Secretary. The applicant complained that he had a right under Article 13 of the Constitution to appeal to the President and that the Prison Secretary had no authority to interfere with this right.

In April, 1968, the applicant applied to the High Court for a writ of certiorari and an order of mandamus against the Prison Governor and the Prison Secretary for stopping his letter to the President. He submitted that he then wrote two further letters requesting the result of his previous complaints without receiving any reply.

The applicant complained that numerous submissions by him, inter alia, to the High Court or the Supreme Court had remained without reply. By way of example, he maintains that between 10th September, 1967 and 27th July, 1968, he wrote 17 times to the High Court without his letters being answered. In this connection, the applicant made a number of allegations concerning the President of the High Court who also acted as trial judge in his case.

It appeared that most of these submissions concerned proceedings relating to the applicant's attempts to obtain by way of writs for habeas corpus, certiorari or mandamus, a finding that he was being unlawfully detained. According to the applicant most of these applications had simply remained unanswered or refused without the applicant having been allowed to appear before Court. However, one application seeking an order of habeas corpus was heard by the Supreme Court on 31st January, 1969. The applicant complained that the judgment was not delivered until July, 1969.

The applicant also complained that his repeated attempts to have one of the trial witnesses summoned to a District Court to answer charges for perjury had been unsuccessful.

The applicant complained of the conduct of certain proceedings concerning his request that certain property retained by the police should be returned to him. On 21st May, 1968, the Circuit Court dismissed the applicant's appeal against an order issued by the Middleton District Court in this respect. The applicant alleged that the courts were unduly influenced by the prosecution during these proceedings.

The applicant also complained of his treatment in the Portlaoise Prison and, in particular, that he did not receive food in accordance with the requirements of the Buddhist faith. When he protested he was subjected to disciplinary punishment.

Before these measures were imposed the applicant had hunger strike for three days, to protest against the prison food and the prison doctor's behaviour towards him. The doctor declared him, however, fit to undergo the punishment imposed. The applicant alleged that he was punished as a reprisal for having attempted to complain about the conditions at the prison. He further complained that certain letters of complaint, inter alia, to the Irish Medical Association had been suppressed and this decision had been upheld by the Ministry of Justice. According to the applicant he suffered from a skin disease (psoriasis) but his requests for treatment had been unsuccessful. In this respect the applicant submitted that eight months after he applied to the Minister of Justice

for such treatment his letter had remained without reply.

The applicant alleged violation of Articles 6, paragraphs (1) and (3) (b) and (c), and 14 of the Convention.

#### B. Proceedings before the Commission

The Commission examined the application on 1st October, 1969, and by partial decision declared the application inadmissible insofar as the applicant's complaints related to:

- his arrest in Scotland and his subsequent detention and delivery into the custody of the Irish authorities;
- his conviction and sentence at the Central Criminal Court and the court proceedings concerned;
- applications for an order to habeas corpus and for rehearing of his appeal;
- attempts to have a witness prosecuted for perjury;
- proceedings relating to the restitution of certain property;
- his treatment in prison and, in particular, alleged denial of food in conformity with his Buddhist faith.

In regard to the applicant's complaints concerning the refusal to transmit his petition to the President of Ireland, the Commission found that this complaint gave rise to a question as to whether there had been an interference with the right to respect for correspondence guaranteed under Article 8, paragraph (1), of the Convention, and that an examination of the file did not give the information required for determining the question of admissibility. It therefore decided, in accordance with Rule 45, paragraph (3) (b), of the Rules of Procedure to give notice thereof to the respondent Government and to invite the Government to submit its observations in writing on the question of admissibility. The Commission also decided, in the meanwhile, to adjourn its examination of that part of the application.

The respondent Government submitted its observations on 11th December, 1969. These were communicated to the applicant who submitted his observations in reply on 12th January, 1970.

#### C. Submissions of the parties

It is first to be noted that the applicant's observations of 12th January, 1970, which comprise 18 handwritten foolscap sheets, are not limited to the only issue on the applicant of which the respondent Government was invited to submit written observations. In his observations and in several letters to the Commission received subsequently to the partial decision on admissibility of 1st October, 1969, he has made further complaints, reverted to previous complaints and raised various questions of procedure.

#### I. Arguments of the parties as to the stopping of the petition to the President

##### 1. Restrictions on a prisoner's correspondence

The respondent Government submits that, in accordance with the recognised principles of international law, the provisions of Article 8 of the Convention, insofar as they relate to the rights of prisoners and detained persons, should not be interpreted in isolation but in conjunction with Article 5 of the Convention which foresees that in certain circumstances there may be interference by the State with "the right to liberty and security of person". In particular, the exceptions set out in paragraph (2), of Article 8 should not be considered as exhaustive insofar as they relate to prisoners and detained persons. To put the case another way, the Government would view Article 8 as intending to relate to the rights to respect for private life and family life, home and correspondence of persons living in ordinary circumstances but should not be regarded as absolute in its application

to persons subject to the various forms of detention recognised as lawful by Article 5. Otherwise, for example, the normal restrictions on non-essential or social letters of prisoners would not seem to be permitted by Article 8.

The Government does not consider, therefore, that the right to respect of correspondence in Article 8 is interfered with by the State when prison regulations provide in a reasonable manner for security of correspondence, limitation of the number of letters, non-transmission of letters in certain necessary circumstances, etc. The applicant was given considerable facilities for correspondence, both outgoing and incoming. In this connection the Government refers to a list according to which the applicant submitted, between 24th May, 1967 and 25th November, 1969, 46 applications to the Department of Justice, and between 24th April, 1967 and 18th December, 1969, sent more than 400 letters to various courts, authorities and private individuals. In addition, he was said to have received 283 letters while in Portlaoise Prison, non of which had, according to the records, been withheld from him.

The applicant argues that Article 5 has no application to his complaint which should only be considered under Article 8. He describes the Government's arguments in this respect as being neither proper nor lawful. The applicant calls the Government's reference to the prison rules a "downright lie" as, in his opinion, the right of the prison authorities to withhold a letter which is "objectionable" should only apply to letters "which bear abuse or has any dirty words as remarks".

## 2. Purpose of the letter concerned

The Government submits that it appeared from the applicant's letter to the President, copy of which was enclosed with the Government's observations, that the purpose of the letter was to ask for a "retrial" and not to "petition for pardon". In fact the applicant was at some pains in his letter to emphasise that his purpose was to look for a retrial. He says in line six: "I am not asking to be set free, all I am asking is a retrial". The President of Ireland has no powers or functions under the Irish Constitution or law to arrange for a retrial in these circumstances or, indeed, in any circumstances. Irish law and procedure relating to appeals in criminal cases, including requests for retrials, had already been exhausted by the applicant as appears both from the letter in question and from the various letters which he has transmitted to the Commission. The applicant had made several applications both to the Court of Criminal Appeal and to the Supreme Court and was given every assistance by these bodies to enable him to pursue any valid complaint which he might have. Accordingly, no purpose could have been served by transmitting to the President of Ireland a letter requesting a retrial since the President could not have taken any action on the matter. As the Commission is aware, the applicant has also appeared before the Irish Supreme Court since the date of the letter in question.

The applicant submits that whether or not his letter contained a petition for pardon or a request for retrial, it was addressed to the President. Accordingly, the only person entitled to reply would be the President's Secretary. Under the Irish Constitution the prison authorities or the Department of Justice have no right to stop or refuse an appeal either for pardon or retrial.

As regards the Government's statement that he had exhausted all remedies in respect of his conviction and sentence, the applicant submits that it is true that he had made many applications to the Supreme Court. He alleges, however, that he has not been granted the rights of an accused person. In this connection he complains of the proceedings relating to his application for leave to appeal on 26th July, 1967. He agrees that the Supreme Court has heard his case but complains that it has not been willing to see the evidence and that its

judgment is contrary to the arguments presented to it.

The applicant also alleges that he is illegally detained and complains of the handling of his various applications for an order of habeas corpus, an order of certiorari and his challenge of the Middleton District Court.

### 3. The abusive character of the letter

The Government draws the attention of the Commission to the fact that the letter in question contained most serious and offensive allegations against Mr. Justice K, President of the C Court, as well as against prosecution and defence counsel and witnesses involved in the applicant's trial. Indeed, most of the letter is taken up with accusations against Mr. Justice K rather than with the purported object of the letter, namely a request for a retrial.

In these circumstances, taking into account the purpose of the letter and having particular regard to the allegations against Mr. Justice K, the Department of Justice, to whom the letter was referred for consideration by the Prison Governor, decided that it should not be transmitted.

In this connection the Government refers to the Commission's decision on the admissibility of Application No. 1628/62 (X. v. Federal Republic of Germany, Collection of Decisions, Vol. 12, page 61). From this case it appears that the Commission considers that where letters of prisoners contain statements and accusations against third persons which, after careful enquiry, prove groundless, violation of the applicant's right to freedom of correspondence does not occur since the interference exercised is related to "the protection of the rights and freedom of others" authorised by paragraph (2) of Article 8 of the Convention. This case also refers to the constant view of the Commission as to the rights of Governments to have "a certain margin of appreciation in determining the limits that may be placed on the exercise of the rights in question". It was clear that the gross accusations against Mr. Justice K. were groundless. It was clear also that the rights of a number of persons, and in particular Mr. Justice K., not to be subjected to attacks upon their honour or reputation, as described in Article 12 of the Universal Declaration of Human Rights, would have been infringed in the transmission of this communication to the President of Ireland.

The applicant has submitted in reply:

"I agree that I did accuse D.K. in my appeal to the President of Ireland. I have gone indeed further than that. I have in fact accused K. in the Supreme Court. I have challenged the Supreme Court to bring Mr. K. to the Supreme Court and to allow me the Court's permission to challenge the C. Court's President in person and openly in the Supreme Court. The results were the excuse that Mr. X. was not available as he was on some other case right then. The Government states that I had accused the prosecution and defence counsel, also prosecution witnesses. I in fact, from the start of my trial, openly accused the State's number one witness, a prisoner, F."

The applicant then makes further submissions regarding the court proceedings concerned and argues that, if his allegations were not true, the Government should not be afraid to investigate them.

### II. Other complaints made by the applicant

The submission of the applicant on issues other than the one on which the respondent Government has been invited to submit observations on admissibility can be summarised as follows:

(a) The applicant complains that a number of letters written by him

have been improperly stopped, including the following letters:

- a letter written to the Irish Medical Association in order to complain about the prison doctor;
- a letter of 24th May, 1967, addressed to the Glasgow Corporation Office, asking for a change of his name by deed poll;
- letters addressed to the British Home Secretary concerning the applicant's alien's papers and other personal matters;
- a letter of 18th August, 1969, addressed to Mr. B. of the United Nations Social Defence Section;
- a letter asking a Scottish Member of Parliament to assist him;
- a letter written to the newspaper "News of the World".

The applicant further complains that a number of applications to the prison authorities listed in the Appendix to the Government's observations have not been replied to, whereas three other applications allegedly submitted in August and September, 1969 are missing in the list.

(b) The applicant has also in this connection complained that a letter to the Commission of 25th September, 1969, was not received by the Commission's Secretary until 13th October, 1969, and accordingly too late to be considered when the Commission took its partial decision on 1st October. The applicant considers that this proves that even letters and documents sent to the Commission are being interfered with.

(c) The applicant complains generally of the conditions in the Portlaoise Prison which he describes as "Belsen Camp No. 2" and refers to the restrictions imposed on alleged misconduct. He complains of the hostile attitude of the newly-appointed Prison Governor who only allows him to appear before him once a week.

He also complains of the difficulty in obtaining sufficient writing paper in order to continue his correspondence and that he has been refused air letters without having seen the Prison Governor first.

#### THE LAW

Whereas, insofar as the applicant complains that the refusal of the Department of Justice to allow transmission of his petition of 26th March, 1968, to the President of Ireland constituted a violation of his right to respect for his correspondence under Article 8, paragraph (1) (Art. 8-1), of the Convention, it is to be observed that paragraph (2) of the said Article (Art. 8-2) permits interference with a person's correspondence by a public authority where such interference is in accordance with the law and is necessary in a domestic society, inter alia, for the protection of the rights and freedoms of others;

Whereas, in cases in which the rights guaranteed in Article 8 (Art. 8) are at issue, the Commission has the competence and indeed the duty to appreciate whether or not interference by a public authority is justified in accordance with the provisions mentioned in paragraph (2) of the Article (Art. 8-2);

Whereas the respondent Government has referred to the relevant prison regulation which provides that letters from a prisoner may be stopped if the contents are objectionable and it has submitted that the applicant's letter contained most serious and offensive allegations against the judge as well as against prosecution and defence counsel and witnesses involved in the applicant's trial; whereas the Government has further stated that the transmission of this letter to the President would have infringed the right of the judge and the other persons concerned not to be subjected to attacks upon their honour or reputation;

Whereas an examination of the letter in question confirms the serious nature of a number of allegations made in it by the applicant; whereas

it is clear that the decision of the Department of Justice not to forward the letter concerned was an interference with the applicant's right to respect for his correspondence which is clearly permitted under paragraph (2) of Article 8 (Art. 8-2), in particular, for the protection of the rights of others; whereas, therefore, this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, under Article 27, paragraph (1) (b) (Art. 27-1-b), of the Convention, the Commission may not deal with any application submitted under Article 25 (Art. 25), if it is substantially the same as a matter, which has already been examined by the Commission and contains no relevant new information;

Whereas a number of the issues raised by the applicant in his submissions subsequent to the partial decision of 1st October, 1969, as to the admissibility of the application, merely repeat complaints which were declared inadmissible by the said decision and to not contain or add any relevant new information; whereas it follows that these complaints are, within the meaning of Articles 4, paragraph (3) (Art. 4-3), of the Convention, 27, paragraph (1) (b) (Art. 27-1-b), substantially the same as a matter previously examined and rejected by the Commission;

Whereas, insofar as the applicant makes new complaints concerning further restrictions on his correspondence and the manner in which he is being treated by the prison authorities, an examination of the case as it has been submitted, including an examination made ex officio, does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention; whereas, in particular, the Commission has frequently held that the normal control, including in certain circumstances a restriction of correspondence is an inherent feature of imprisonment and does not constitute a violation of paragraph (1) of Article 8 (Art. 8-1); whereas it follows that also this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, the Commission has also considered the applicant's complaint that the transmission of letters and documents sent by him to the Commission have been interfered with by the prison authorities and, in particular, that one letter was not received by the Commission's Secretary until two weeks and four days after it had been handed by the applicant to the prison authorities for transmission;

Whereas the Commission observes in this respect that the applicant has, in fact, made a large number of substantial submissions and presented his case in completely adequate manner; whereas there is no evidence that letters sent by the applicant to the Commission have been improperly delayed by the Irish authorities; whereas, therefore, it is clear that the applicant has not been hindered in the effective exercise of the right to lodge an application as guaranteed in Article 25, paragraph (1) (Art. 25-1), in fine, of the Convention;

Now therefore the Commission

1. DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE;
2. DECIDES TO TAKE NO FURTHER ACTION IN RESPECT OF THE ALLEGED INTERFERENCE WITH THE EFFECTIVE EXERCISE OF THE RIGHT OF INDIVIDUAL PETITION.