CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF D.G. v. IRELAND

(Application no. 39474/98)

JUDGMENT

STRASBOURG

16 May 2002

FINAL

16/08/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of D.G. v. Ireland,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 9 November 2000 and 25 April 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39474/98) against Ireland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Irish national, D.G. ("the applicant"), on 14 January 1998.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr J. Quinn, a solicitor practising in Dublin. The Irish Government ("the Government") were represented by their Agents, Mr R. Siev and, subsequently, Dr A. Connelly, both of the Department of Foreign Affairs. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant, a minor at the relevant time, complained about his detention, without charge or conviction, in a penal institution between 27 June and 28 July 1997 and related matters. He relied on Articles 3, 5, 8, 13 and 14 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 9 November 2000 the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry]. The Government were also requested to submit a copy of the

prison authorities' file concerning the relevant period of the applicant's detention in St Patrick's Institution.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

8. On 1 November 2001 the Court modified the composition of its Sections (Rule 25 § 1) and the application was allocated to the newly constituted Third Section (Rule 52 § 1), within which section the Chamber that would consider the case was constituted (Rule 26 § 1).

9. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was in the care of the Eastern Health Board ("the Board") from when he was 2 years of age until the age of majority (18 years). From 1984 to 1986 he was placed in children's homes and thereafter with a foster family. In 1991 the foster placement broke down and the subsequent placement with a "carer" family also broke down due to the applicant's behaviour. Between 1993 and May 1996 he was detained at Oberstown Boys' Centre on foot of assault charges. Subsequent placements failed again due to the applicant's behaviour and in August 1996 the Board placed him in a private and specialised residential unit in the United Kingdom, which placement also failed.

11. In November 1996 the applicant was convicted in the United Kingdom of criminal damage, burglary, arson and aggravated theft (offences committed during his stay in the above-mentioned residential unit) and sentenced to nine months in prison. In February 1997, and at the request of the Board, the Irish High Court granted a warrant (pursuant to the Transfer of Sentenced Persons Act 1995) allowing the applicant to serve the balance of his nine-month sentence in St Patrick's Institution ("St Patrick's") in Ireland. The applicant was released on 7 March 1997.

12. He slept rough the first night of his release and subsequently resided on a temporary basis in a homeless boys' hostel run on a voluntary basis by a priest. From then until the judicial review proceedings (described below) issued, the applicant's solicitor wrote to the Board five times requesting that proper accommodation be made available to the applicant. A case conference was held on 14 March 1997 where it was agreed that his needs would be met in a high-support therapeutic unit for 16- to 18-year-olds but that no such unit existed in Ireland and could not be put in place in time for

the applicant's needs. It was decided that the Board would look into placements outside Ireland and into interim options in Ireland.

13. On 28 April 1997 the High Court appointed a guardian *ad litem* and gave the applicant leave to apply for judicial review (citing, *inter alia*, the Board and the Attorney-General as respondents) for (a) a declaration that, in failing to provide suitable care and accommodation for the applicant and in discriminating against him as compared with other children, the respondents deprived the applicant of his constitutional rights under, in particular, Articles 40 § 1, 40 § 3 (1), 40 § 3 (2) and 42 § 5 of the Irish Constitution. The applicant referred in this context to his being a child at risk, namely dangerous to himself and potentially to others, and pointed out that the lack of appropriate care meant that his rights had not been vindicated; (b) an order of mandamus and an injunction directing the respondents to provide suitable care and accommodation for the applicant were also requested. The grounds submitted by the applicant related to the Board's failure to comply with its statutory duties to provide such accommodation under sections 4, 5, 16 and 38 the Child Care Act 1991; and (c) damages, although the applicant had submitted that he would suffer irreparable loss and damage for which monetary compensation would not suffice (hence the application for an order of mandamus and an injunction).

14. The application for interlocutory relief (namely for relief until the making of a final order following the hearing of the case) came before the High Court on 6, 12, 21 and 30 May 1997. However, on 4 June 1997 the applicant was assaulted by another resident with an iron bar and taken to hospital with a fractured skull. He was operated on and subsequently discharged on 12 June 1997 and spent that night in bed-and-breakfast accommodation. On 13 June 1997 the application was adjourned on the basis that the applicant would reside in the hostel (run by the priest) under continuous 24-hour supervision of childcare workers of the Board. The Board was to continue its enquiries for a suitable facility. On 17 June 1997 the High Court ordered that the applicant reside in Kilnacrot Abbey, another hostel, under the care of social workers of the Board.

15. The interlocutory matter was again considered by the High Court on 26 and 27 June 1997. Evidence was presented to the effect that the applicant's continued residence in that hostel was no longer feasible. Evidence was also heard from the Board's leader responsible for the applicant's case who stated that the Board's facilities could no longer cater for the applicant. A consultant psychiatrist at the Central Mental Hospital in Dublin gave evidence to the effect, *inter alia*, that he knew of no services in the State that could even start to address the problems the applicant represented. A report was presented detailing a number of serious incidents, including threats of assault made by the applicant, and the court heard the legal submissions of the parties.

16. The High Court delivered its judgment on 27 June 1997. The High Court judge commented at the outset as follows:

> "This is yet another case in which the Court is called upon to exercise an original Constitutional jurisdiction with a view to protecting the interests and promoting the welfare of a minor. The application arises because of the failure of the State to provide an appropriate facility to cater for the particular needs of this applicant and others like him. It is common case that what is required to deal with his problem is a secure unit where he can be detained and looked after. No such unit exists in this State and even if one did, there is no statutory power given to the Court to direct the applicant's detention there. Such being the case, and in the absence of either legislation to deal with the matter or the facilities to cater for the applicant, I have in the short-term to do the best that I can with what is available to me."

17. The judgment described the applicant's history and family situation as "quite appalling". He was one of a family of five children. His father was serving a life sentence for murder and serious sexual offences. His mother lived a "chaotic lifestyle", refusing to settle in any type of permanent accommodation. Of his siblings, only one led a normal life. The others were in care, in detention or were drug users.

18. On the evidence before it, the High Court accepted that the applicant was not mentally ill but that he had a serious personality disorder; that he was a danger to himself and to others; that he had a history of criminal activity, violence and arson; that he had absconded from non-secure institutions; that he had failed to cooperate with the Board and its staff; and that he had failed to cooperate in the carrying out of a psychiatric assessment of him in the past. It was "common case" that the applicant required a "secure unit where he can be detained and looked after" and that no such unit existed in Ireland. The High Court judge considered the welfare of the child to be paramount, noted the conflicting constitutional right to liberty of the applicant and observed that the evidence before him as to the child's needs and the facilities available would resolve the conflict. The court considered that there were four possible options.

19. In the first place, the High Court could order the applicant's release from the custody of the Board. However, given the real risk of serious self-injury possibly resulting in death, this option was excluded. Secondly, the applicant could be sent back to Kilnacrot Abbey. However, given the danger he posed to himself and to others and his previous lack of cooperation, the Court ruled out this possibility. The third option was the Central Mental Hospital but the evidence before the High Court and the applicant's own preference ruled out this option.

20. The fourth option was the applicant's detention in St Patrick's, which option was adopted with "considerable reluctance" by the court as the only manner of vindicating the applicant's constitutional rights. The High Court acknowledged that it was a penal institution. However, having noted the conflicting constitutional rights of the applicant, the applicant's needs, the constitutional obligations of the State to the applicant and the relevant

jurisprudence of the High and Supreme Courts in similar cases, the High Court judge was satisfied that the evidence supported his findings that, in the absence of any other facility within the State, the place most suitable to ensure the applicant's welfare was St Patrick's, and that the High Court could exercise its "inherent jurisdiction" developed by the jurisprudence (to which the judgment referred) in making an order for the applicant's detention there. It was noted that the applicant had been in that institution previously and seemed to have done well there. Accordingly, he ordered that the applicant be brought to St Patrick's by the police and be detained there for three weeks (until 18 July 1997), all parties agreeing that detention for longer was not appropriate. The High Court judge pointed out in conclusion that he was

> "extremely unhappy at having to make this order ... but of the four options available to [him] it is the one which, in [his] view, is best suited to the welfare and needs of this applicant in the short term. It is not a solution. None of the other options are a solution either. But of the four unattractive options it seems to [him] that from the welfare of this applicant it is the least offensive and in [his] view his welfare will be best served by being committed there as [he has] ordered".

21. Certain conditions were attached to the order by the High Court. The applicant was to be subject to the "normal discipline" of that institution and was to have a full psychiatric assessment. The "fullest cooperation" was requested by the High Court between the Board and the authorities of the institution as regards access by the staff of the Board to the applicant to allow the professionals who had been dealing with the applicant to have input into his welfare whilst in St Patrick's, provided that that did not create insuperable difficulties from the point of view of the management of the institution. In particular, the High Court recommended that the normal visiting restrictions applicable be waived as much as possible in the vital twenty-four hours after the applicant's detention.

22. Moreover, the High Court's concerns about the suicide risks presented by the applicant were to be notified to the Governor of St Patrick's and the appropriate facilities were to be put in place in this respect. The High Court was to receive a report by the psychiatric staff of St Patrick's and by the Board on the applicant's progress, if any, and on his general well-being by 16 July 1997. There was to be liaison between the Board and the guardian *ad litem*, the latter of whom was to obtain the reports to be prepared for the court on the applicant. In the meantime, the Board was to continue to try to find a suitable place for the applicant's needs outside the jurisdiction and the matter was to be reviewed by the High Court on 18 July 1997.

23. On the same day (27 June 1997) the applicant was brought to St Patrick's and placed in a padded cell overnight.

24. The following day, the Chief Officer informed the applicant of the rules and regulations, the daily routine and of the services that were on offer

(educational, welfare, spiritual, library, gym, work and recreation), which latter matters were detailed in a booklet given to the applicant. The applicant was asked if he wished to attend educational classes. He made no such request and did not participate in the institution's educational programme.

25. The applicant appealed to the Supreme Court. He referred to the Board's failure to fulfil its statutory duties under sections 36 and 38 of the Child Care Act 1991 and to respond to his constitutional rights under Article 42 § 5. He also submitted that detention in a penal institution did not appropriately harmonise his conflicting rights under Article 42 § 5 and Article 40 § 4 (1). He also dealt, in his submissions, with the place of detention proposed by the High Court arguing that, if detention was necessary and lawful to protect and vindicate a child's rights, detention in a penal institution was not. A penal institution is a place of punishment, the effect of detention there, with or without conviction, constituted punishment and it was completely different to a high-security unit staffed by qualified childcare workers and operated in a manner consistent with Article 42 of the Constitution. His placement in a suitable high security environment would be more appropriate to his needs and the effect of such an order would be to oblige the Board to comply with its statutory duties and the State to comply with its constitutional duties through the Board. He also relied on Article 5 § 1 (d) of the Convention.

26. On 7 July 1997 the Governor prepared a short conduct report for the Supreme Court in which he noted that the applicant was well behaved, mixed freely with other inmates and had not come under any adverse attention.

27. The Supreme Court heard the applicant's appeal on 9 July 1997 and reserved judgment. Judgment was delivered on 16 July 1997 and, by four votes to one, rejected the appeal. The Chief Justice gave the main judgment of the Supreme Court (two judges concurring) and described the issues before him as being whether the High Court had jurisdiction to order the detention of the applicant and, if so, whether that jurisdiction extended to making an order directing the applicant's detention in a penal institution and, if so, whether the jurisdiction was properly exercised in the applicant's case.

28. The Chief Justice noted that (apart from the particular jurisdiction assigned by the Constitution and by the Statute) the High Court has an inherent jurisdiction “as ample as the defence of the Constitution requires”. The Chief Justice noted the conflicting constitutional rights of the applicant at issue in the case: on the one hand, he had the right to liberty (Article 40) and, on the other hand, he had the unenumerated right “to be fed and to live, to be reared and educated, to have the opportunity of working and of realising his or her personality and dignity as a human being”. The Chief Justice accepted that the High Court could be called upon to establish a

priority of such rights as the case demanded. He noted that all parties agreed that the applicant's welfare (which was of paramount importance) required his detention in a "safe and secure unit", but he regretted that the High Court judge was forced, by reason of the lack of any suitable facility, to order the applicant's detention in a penal institution.

29. In conclusion, the Chief Justice was satisfied that the High Court had jurisdiction to make the order it did, that it did so in a lawful manner consistent with the requirements of the welfare of the applicant and that the High Court was correct in exercising such jurisdiction for a short period of time. He added, however, that the exercise by the courts of their jurisdiction in the case should not be considered by the respondents in the proceedings to relieve them of their statutory obligations regarding the applicant and that they should continue their efforts to make suitable alternative arrangements consistent with the needs of the applicant.

30. A fourth judge considered that the High Court's jurisdiction had not been directly disputed by the parties, and went on to agree with the option chosen by the High Court. The fifth and dissenting judge in the Supreme Court considered that it was not for the courts to conjure up the necessary accommodation but to protect and vindicate the child's rights and for the Board to address its statutory duties and obligations. It was, in that judge's view, a step too far to order the child's detention in a penal institution having regard to his moral, intellectual, physical and social welfare and his rights to liberty, equality and bodily integrity.

31. The High Court heard further expert evidence on 18 July 1997 and apparently the applicant had been cooperative in St Patrick's. The High Court continued his detention in St Patrick's until 23 July 1997 on the conditions previously applicable, the Board being required to inform the court on the return date of the full details and efforts made to provide facilities for the applicant.

32. On 23 July 1997 the Board submitted that it had identified a property which would take a short time to equip and staff to enable it to receive the applicant and it was indicated that it would be ready by 28 July 1997. The Board also indicated that the applicant was to travel to the United Kingdom to be assessed with a view to possible placement there. While the applicant wanted to be immediately released, his guardian *ad litem* considered that he should not be left on the street. The High Court directed his continued detention in St Patrick's until 28 July 1997 and that every effort should be made by the Board to ensure that the relevant property be ready to receive the applicant by 28 July 1997.

33. On 28 July 1997 the applicant was released from St Patrick's by order of the High Court. Apart from basic personal details and the relevant court orders constituting authority for detention, the applicant's file from that institution contains few entries and his "prisoner's profile" forms were mainly not filled in. There was a note to the effect that he had been placed

in a padded cell in June 1997 and a copy of the Governor's report of 7 July 1997.

34. On the same day (28 July 1997) the applicant was placed in the accommodation prepared by the Board under 24-hour supervision. He was allowed to leave the premises occasionally for limited periods. Leave was also given to take the applicant to the United Kingdom for assessment on 31 July 1997.

35. The applicant then absconded from that property and a warrant for his arrest was issued by the High Court on 6 August 1997. He was arrested and brought before the High Court on 8 August 1997. On the same day, and having heard submissions from counsel for the applicant and the Board together with the evidence on behalf of the Board and of the applicant, the High Court ordered the applicant's detention in St Patrick's until 26 August 1997.

36. Conditions were again applied by the High Court to this detention. He was to be subject to the discipline of St Patrick's. A full assessment of the applicant's drug dependency was to be made, the assessment to include any outpatient assessment and/or treatment consistent with the requirements of St Patrick's. There was to be liaison between the authorities of St Patrick's and the Board. By 26 August 1997 the High Court was to be in possession of a report in relation to the applicant's drug-addiction problem prepared by the Board and the staff of St Patrick's. The guardian *ad litem* was to have liberty to liaise with the authorities of St Patrick's and with the Board. The Governor was requested by the High Court to dispense with the visiting restrictions during the first twenty-four hours of the applicant's detention in so far as possible and consistent with the good running of the institution, to allow the officials of the Board to have full access to the applicant. The matter was adjourned until 26 August 1997.

37. On 26 August 1997 the High Court ordered the applicant's release to the custody of the Board on the same terms as the order of 28 July 1997.

38. On 3 November 1997 the applicant re-entered his judicial-review proceedings. On 10 November 1997 evidence was heard from the Social Work Team Leader, Ms F., on the applicant's case and the applicant was placed in the care of the Board, subject to his attendance at City Motor Sports for practical and vocational education. The case was adjourned to 24 November 1997, on which date it was adjourned to 15 December 1997 to await a progress report from City Motor Sports. On 15 December 1997 the case was adjourned to the following day. On 16 December 1997 the case was adjourned to 19 December 1997 to allow proposals to be made by the Board.

39. On 19 December 1997 the High Court heard evidence from Ms F. in relation to possible long-term accommodation and the case was listed for mention on 22 December 1997, on which date it was listed for mention on 5 January 1998 to allow the Board more time to find appropriate long-term

accommodation. On 5 January 1998 evidence was heard from Ms F. and the case was listed for mention on 9 January 1998 in order to give the Board further time. On 9 January 1998 the Board informed the High Court that suitable temporary accommodation was to be ready by February 1998 and the case was adjourned for further discussion to 12 January 1998, on which date the High Court heard evidence from Ms F. It was decided to maintain the care order in force and to adjourn the case until 16 February 1998.

40. On 16 February 1998 the High Court was advised that the applicant had been moved to new short-term accommodation of the Board under 24-hour supervision. The report from City Motor Sports on the applicant was presented and the case was adjourned until 2 March 1998 to allow for his progress to be assessed. On 2 March 1998 the case was adjourned to 23 March 1998 to allow the Board time to prepare recommendations for the reduction of the supervision of the applicant. On 23 March 1998 the High Court ordered that the Board's recommendations be put in place. The recommendations referred to the proposed timing of the withdrawal of supervision, assisting the applicant to obtain his own accommodation and social welfare benefits, the continuation of all necessary social work support after the official care order expired and the informing of the Board's senior management and legal agent of the recommendations given the danger the applicant continued to pose to himself and to others.

41. The applicant remained in the Board's accommodation until April 1998 when he returned to live in the same hostel in which he had stayed in March 1997. On 30 April 1998 his judicial review proceedings were adjourned to 1999. The applicant's eighteenth birthday was on 9 July 1998. He stayed on in the hostel until October 1998 when he was removed to hospital after causing injury to himself.

42. After discharge from the hospital he lived rough on the streets. Having been charged with minor offences he was then charged with more serious offences, was arrested and charged with, *inter alia*, threatening his uncle with a knife. He was remanded for trial and detained on remand in Mountjoy Prison. The outcome of those proceedings is not known.

43. In his report dated 20 August 1999 addressed to the Department of Justice, St Patrick's medical officer reported that the applicant had been seen by a medical officer on arrival and on several occasions in the following two weeks. The applicant had complained of feeling depressed, especially at night, and was prescribed sleeping tablets. He was referred to a consultant psychiatrist, Mr McC., who kept the applicant on his medication and considered that he was a troubled youth "who felt it difficult to deal with prison life". The reporting medical officer himself saw the applicant on 7 July 1997, when he treated the applicant for a sprained ankle sustained while playing football. That officer again saw the applicant on 25 July 1997, when he was "becoming frustrated and angry at his situation". That officer found him "quite well" and prescribed a mild sedative and night-time

sedation and asked the visiting psychiatrist to review him. A consultant forensic psychiatrist had also seen the applicant.

The report goes on to mention that that medical officer had no record of any input from the resident psychologist: the latter's records were retained confidentially, it could not be assumed that the latter had had no input and the latter should be contacted for information concerning any proactive treatment carried out with the applicant of which that medical officer was not aware.

44. Mr McC. completed a report on the applicant in November 1999. He mentioned that he had seen the applicant twice: on 30 June and 22 August 1997. During the interviews the applicant did not present any signs of "major psychiatric illness either of a schizophrenic or depressive nature". There was no mention of how the applicant's detention in St Patrick's impacted on him.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

45. The relevant provisions of the Constitution are:

Article 40 § 1

"All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."

Article 40 § 3 (1)

"The State guarantees in its laws to respect, and in as far as practicable, by its law to defend and vindicate the personal rights of its citizens."

Article 40 § 3 (2)

"The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property of every citizen."

Article 40 § 4 (1)

"No citizen shall be deprived of his personal liberty save in accordance with law."

Article 42 § 4

"The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or

institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation."

Article 42 § 5

"In exceptional cases, where parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of parents, but always with due regard for the natural and imprescriptable rights of the child."

B. The Child Care Act 1991 ("the 1991 Act")

46. The 1991 Act sets out the duties of a health board in relation to the care and protection of children residing in its administrative area. Section 2(1) defines a child as "a person under the age of 18 years other than a person who is or has been married".

47. Section 3 provides, *inter alia*, as follows:

"1. It should be a function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection.

2. In the performance of this function, a health board shall –

(a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and coordinate information from all relevant sources relating to children in its area;

(b) having regard to the rights and duties of parents, whether under the Constitution or otherwise –

(i) regard the welfare of the child as the first and paramount consideration, and

(ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child; and

(c) have regard to the principle that it is generally in the best interests of a child to be brought up in a family."

48. The relevant parts of section 4(3)(a) provide as follows:

"Where a health board has taken a child into its care under this section, it shall be the duty of the board –

(a) subject to the provisions of this section, to maintain the child in its care so long as his welfare appears to the board to require it and while he remains a child ..."

49. Section 5 provides as follows:

"Where it appears to a health board that a child in its area is homeless, the board shall enquire into the child's circumstances, and if the board is satisfied that there is no accommodation available to him which he can reasonably occupy, then, unless the

child is received into care of the board under the provisions of this Act, the board shall take such steps as are reasonable to make available suitable accommodation for him."

50. The relevant parts of section 36 provide as follows:

"(1) Where a child is in the care of a health board, the health board shall provide such care for him, subject to its control and supervision, in such of the following ways as it considers to be in his best interests –

...

(b) by placing him in residential care (whether in a children's residential centre registered under Part VIII [of the 1991 Act], in a registered home maintained by the health board or in a school or other suitable place of residence), or

...

(d) by making such other suitable arrangements (which may include placing the child with a relative) as the health board thinks proper.

...

(3) Nothing in this section shall prevent a health board sending a child in its care to any hospital or to any institution which provides nursing or care for children suffering from physical or mental disability."

51. The relevant parts of section 38 provide as follows:

"1. A health board shall make arrangements with the registered proprietors of children's residential centres or with other suitable persons to ensure the provision of an adequate number of residential places for children in its care;

2. A health board may, with the approval of the Minister, provide and maintain a residential centre or other premises for the provision of residential care for children in care."

C. High-support and special-care units for minors with special needs

52. In 1997 the Board had two high-support units in existence for children with serious behavioural and emotional problems between the ages of 12 and 18 years. A unit in Wicklow had eight places and a unit in Dublin had four places. In that year, approval was given by the Department of Health to the Board to plan and develop a 24-place special-care unit both in Ballydowd and in Portrane. Subsequently, the matter was reviewed to allow consideration of the costs of these units and to assess the need for them. An expert consultant was appointed to consider such needs in April 1998.

53. The unit in Ballydowd (special-care unit) was completed in January 2001. Construction of the Portrane unit (a high-support unit) was planned to commence in early 2000 and its completion envisaged by September 2001. A special-care unit operates to a high standard of security whereas a high-

support unit, while of similar design, operates to a lower standard of physical security.

54. In July 1998 the High Court gave judgment in a case concerning the care of a minor with special needs (minor suing through his mother and next friend S.B. – *D.B. v. the Minister for Justice, the Minister for Health, the Minister for Education, Ireland, the Attorney General and the Eastern Health Board* (1999) 1 Irish Law Reports Monthly 93). That judgment pointed out as follows:

> "First, the High Court has already granted declaratory relief concerning the obligations of the State towards minors of the type with which I am dealing. In so doing it observed the Constitutional proprieties owed by the Court to the administrative branch of government. It went no further than making a declaration thereby affording an opportunity to the Minister to take the necessary steps to put matters right. But it expected those steps to be taken as soon as reasonably practicable.
>
> Secondly, if the declaration was to be of any benefit to the minors in whose favour it was made, the necessary steps consequent upon it has to be taken expeditiously. Otherwise the minors, most of whom are of the age of 12 to 14 years, would have achieved majority within a few years of the declarations being granted without any benefit being gained from them.
>
> Thirdly, the effect of a failure to provide the appropriate facilities must have had a profound effect on the lives of these minors and certainly put them at risk of harm up to and including the loss of their very lives.
>
> Finally, due regard should be had to the efforts made on the part of the Minister to address the difficulties to date. If the Court were to take the view that all reasonable efforts had been made to deal efficiently and effectively with the problem and that the Minister's response was proportionate to the rights which fell to be protected, then normally no order of the type sought ought to be made."
>
> [The court orders] the Minister for Health to make available to the Eastern Health Board sufficient funding to allow the Eastern Health Board to build, open and maintain a secure 24-bed High Security Unit at Portrane, Co. Dublin, and the Minister for Health to take all steps necessary and to do all things necessary to facilitate the building, opening and maintenance of a secure 24-bed High Security Unit at Portrane, Co. Dublin. The said Unit to be in operation not later than 1 October 2001."

D. St Patrick's Institution

55. St Patrick's came into being pursuant to section 13 of the Criminal Justice Act 1960. Section 13(3) of that Act foresaw the making of regulations providing for the management of that institution.

1. "St Patrick's Institution Regulations 1960" (Statutory Instrument no. 224 of 1960)

56. These regulations deal with the management and functioning of the institution. Section 4 provides that an inmate shall, in so far as the length of his sentence permits, be given such training and instruction and be subjected to such disciplinary and moral influences as will conduce to his reformation and the prevention of crime. Section 5 provides that, subject to the inmate not being declared unfit by the medical officer, an inmate is to be allowed regular physical recreation and exercise and is to be given such regular physical exercise as may be necessary to promote his health and physical well-being. Section 7 provides that, if the Governor is of the opinion that the receipt of letters and visits and the writing of letters by the inmates in addition to those already permitted outside of these regulations will promote the social rehabilitation of the prisoner, then he may permit the inmate to receive so many letters and visits and to write so many letters in addition to those already permitted other than by these regulations as the Governor thinks proper. Section 10 of those regulations provides that:

> "So much of the Rules for the Government of Prisons 1947 ... and the Rules for the Government of Prisons 1955 ... as are made under the Prisons' Acts 1826 and 1856 shall, in so far as they are not inconsistent with these Regulations, apply and have effect in relation to inmates and the Institution in like manner as they apply and have effect in relation to prisoners and prisons."

2. Information submitted by the Government about the regime and certain facilities available in St Patrick's

57. Male offenders aged between 16 and 21 may be committed to St Patrick's either while on remand or after sentencing as it is considered to provide a more suitable environment for young offenders. The majority of male offenders aged between 16 and 17 are held in St Patrick's. As at 16 May 2001, approximately one third of the detainees were 16 or 17 years of age. The regime is as liberal and relaxed as possible within the confines of a secure institution.

58. Cells are unlocked at 8.15 a.m. when the inmates may collect breakfast and then return to their cells; at 9.15 a.m. these are unlocked to permit the inmates to attend a place of employment or school; at 12.15 p.m. they come back, collect lunch and return to their cells; at 2.15 p.m. the inmates may attend a place of employment or school; at 4.10 p.m. they come back, collect their evening meal and return to their cells; at 5.15 p.m. the cells are unlocked for evening recreation; at 7.30 p.m. the inmates come back, collect supper and return to their cells; at 8 p.m. the cells are locked; and at 10 p.m. the lights are switched off.

59. All sentenced prisoners are required to work, although the workshops do not operate on a commercial basis as they are only for training purposes. The emphasis is on training in skilled or semi-skilled work.

60. The Education Unit is open five days a week and has eight full-time staff and approximately seventy to eighty full- and part-time students at any one time on the education register. Along with work training, education comprises one of the two main activities for the inmates. A broad programme of education is emphasising literary and basic education, with classes on health and social education. The unit is equipped with computers, available for learning or for recreational purposes. Students may sit for State school examinations. Upon their arrival all inmates are asked if they wish to attend education classes. Attendance and level of participation is voluntary. Any special requests or particular needs would be regularly discussed by the teaching staff.

61. Inmates are free to recreate during unlocked periods at weekends, on bank holidays, in the evenings of week days and when not attending work or education classes. Facilities include television, table games, a library, a gym and other games (including football, pool and table football) and a reading room. There are certain organised activities (including gym, pool, football, quizzes and chess). Daily newspapers, magazines and other publications are also available to inmates together with sports kits and board games.

62. In general, every prisoner is entitled to at least one visit per week, but in practice visits are allowed more frequently where circumstances permit. Visits in open centres are unsupervised and may be granted on demand. Telephone calls are frequently demanded and permitted. Inmates serving sentences are generally allowed to send two letters per week. Extra letters to family or to legal representatives may be allowed on request. An inmate awaiting trial may send out as many letters as he likes and there is no limit to the number of letters that he may receive.

63. Particular emphasis is placed on the rehabilitation of young offenders in custody and, accordingly, a wide range of services are available. An education service is provided in conjunction with vocational education committees and teachers work in the prison on a full or part-time basis. Training in various vocational skills is available to offenders, including juveniles, with some inmates going on to take city and guilds examinations. Library facilities are provided in conjunction with the public library service and a range of publications including newspapers and magazines are available for recreational purposes. A range of sports and other recreational facilities are available. The prison psychology service together with the probation and welfare services participate in the positive management of sentences and provide counselling to help offenders to cope during custody. A medical service is available including a drug-detoxification programme together with addiction counselling, the latter of which is provided in conjunction with and by various outside agencies such as Alcoholics Anonymous and Narcotics Anonymous.

64. Approximately forty to fifty staff members are employed to facilitate and provide these educational and recreational services to inmates.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

65. The relevant parts of Article 5 of the Convention read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Submissions of the parties

66. The applicant complained that his detention in St Patrick's from 27 June to 28 July 1997 was not "in accordance with a procedure prescribed by law". Neither was it for the purposes of "educational supervision" or of "bringing him before any competent legal authority" within the meaning of Article 5 § 1 (d). In addition, he was a minor in need of special care but was detained in a penal institution where his unique status (uncharged and not convicted) caused other detainees to believe that he was a serious sexual offender pursuant to which he was insulted, humiliated, threatened and abused. The failure to provide appropriate accommodation and care constituted, in his opinion, a violation of Article 5 § 1.

67. The Government submitted that his detention was in accordance with domestic and Convention law and was not arbitrary.

Both the High and Supreme Courts exercised their inherent jurisdiction to protect the applicant's superior constitutional rights, which jurisdiction was confirmed by a clear line of jurisprudence to which those courts referred. As to the question of the "Convention" lawfulness of his detention and arbitrariness, the issue of the applicant's care arose in the context of

judicial review proceedings where the applicant sought appropriate care and accommodation: the option was chosen for a short period, was considered the "least offensive" and the only real option available given the needs of the applicant.

68. The Government further maintained that his detention was for the purposes of "educational supervision".

As accepted in *Bouamar v. Belgium* (judgment of 29 February 1988, Series A no. 129), a brief period of detention in prison pending placement for education elsewhere was not in breach of Article 5 § 1 (d). The present applicant's detention was an "interim custody measure", necessary for his assessment and containment given the danger he posed to himself and others and preliminary to a future regime of accommodation and supervised education, the latter of which was put in place thereafter. This was the case, even though the State's obligations at that time to provide educational supervision did not extend to persons over 16 years of age. Accordingly, his detention was not "fruitless" (as in *Bouamar*) as it was aimed at the facilitation of his educational supervision thereafter. Moreover, the applicant's period of detention was kept to a minimum and was therefore significantly shorter than in *Bouamar*. Furthermore, the facilities in St Patrick's were superior to those available to Mr Bouamar: even if the applicant chose not to avail himself of the educational services, he was not in conditions of virtual isolation as was Mr Bouamar.

69. As regards the domestic lawfulness of the orders for his detention, the applicant submitted that, while the High Court had an "inherent jurisdiction", there were no statutory provisions governing detention in such circumstances and there was no legal obligation on the State to provide educational facilities to individuals over 16 years of age. The Board had, in fact, argued before the High Court that that court had no jurisdiction to detain the applicant in St Patrick's.

70. As to the Convention lawfulness of his detention under Article 5 § 1 (d), the applicant argued that such detention must be for the purposes of educational supervision. Accordingly, either St Patrick's itself should have provided the educational supervision or his detention there should have been to facilitate a programme of educational supervision commencing speedily thereafter. However, neither happened in his case.

As to education at St Patrick's itself, the applicant noted that the Government had argued that he had been detained there for "assessment" and "containment" purposes only. However, he had already been assessed for the purposes of the High Court hearing which expert opined that he knew of no facilities in Ireland that would even begin to address the applicant's problems. In addition, the educational facilities in St Patrick's, as described by the Government, were not sufficient to render detention in that institution educational supervision within the meaning of Article 5 § 1 (d).

As to whether it constituted an interim custody measure pending educational supervision thereafter, the applicant pointed out that the period of vocational training from November 1997 was not contemplated by the High Court orders and did not thereafter constitute "educational supervision". Indeed, it was obvious that the Board had no proposals at all to place before the High Court as to what to do with the applicant after St Patrick's. The failure to provide this educational supervision after his release in July led to a further period of incarceration in St Patrick's in August 1997. While the duration and frequency of detentions are of a different order in this case, the obligations on the State outlined in *Bouamar*, cited above, nevertheless applied in the present case.

71. Accordingly, the applicant concluded that there was never any intention to provide educational supervision (in or after St Patrick's) in the manner required by Article 5 § 1 (d). Indeed, Ireland had delayed significantly in putting in place appropriate facilities for children with the applicant's needs pursuant to its identified constitutional obligations set out in numerous domestic cases including *D.B.*, cited above.

B. The Court's assessment

72. The Court recalls that in *Nielsen v. Denmark*, it found that Article 5 was not applicable to the hospitalisation of the applicant as that hospitalisation was a responsible exercise by the applicant's mother of her custodial rights (judgment of 28 November 1988, Series A no. 144, pp. 23-27, §§ 61-73). That reasoning cannot be transposed to the present case as the orders placing the applicant in St Patrick's were made by the High Court, which court did not have custodial rights over the applicant. Article 5 therefore applies in the present case (see *Koniarska v. the United Kingdom* (dec.), no. 33670/96, 12 October 2000).

73. In addition, it is not disputed that the applicant was "deprived of his liberty" within the meaning of Article 5 § 1. It is not disputed that one of the aims of the relevant detention orders of the High Court (27 June, 18 July and 23 July 1997) was to ensure the applicant's containment or that St Patrick's was a penal institution which the applicant was not free to leave. He was subjected to its disciplinary regime and it is not considered that the exceptions to that regime imposed by the High Court (concerning access to, assessment of and reporting on the applicant) rendered his stay in St Patrick's anything other than a deprivation of liberty within the meaning of Article 5 § 1. The Court finds that he was deprived of his liberty from 27 June to 28 July 1997.

74. The Court recalls that the exhaustive list of permitted deprivations of liberty set out in Article 5 § 1 must be interpreted strictly (see *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, pp. 35-37, §§ 96, 98 and 100).

75. It is further recalled that detention must be lawful both in domestic and Convention terms: the Convention lays down an obligation to comply with the substantive and procedural rules of national law and requires that any deprivation of liberty should be in keeping with the purpose of Article 5 which is to protect an individual from arbitrariness (see *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, pp. 17-20, §§ 39 and 45; *Bozano v. France*, judgment of 18 December 1986, Series A no. 111, p. 23, § 54; and *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 23, § 42). In this respect, there must be a relationship between the ground of permitted deprivation of liberty relied on and the conditions of detention (see *Aerts v. Belgium*, judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V, pp. 1961-62, § 46, with further references).

76. The Government justify his detention on the grounds of "educational supervision" within the meaning of Article 5 § 1 (d) and the Court has therefore considered whether his detention complied with the conditions imposed by that subsection. The Court notes that the applicant turned 17 during the impugned period of detention and could no longer have been required to attend school. However, the relevant part of Article 5 § 1 (d) referring to "educational supervision" concerns the detention of "minors", accepted by Ireland (section 2(1) of the Child Care Act 1991) to be persons under the age of 18. Since the applicant was therefore a minor throughout the relevant period, the only question for the Court is whether the detention was lawful and "for the purpose" of educational supervision (*Bouamar*, cited above, p. 21, § 50) within the meaning of Article 5 § 1 (d).

77. Given the decisions of the High and Supreme Courts, the Court does not consider that the domestic lawfulness of the High Court orders is in doubt (see paragraphs 18, 23 and 24 above, and *Bouamar*, cited above, p. 21, § 49). There may have been no statutory basis, but the High Court exercised its inherent jurisdiction, well-established in the jurisprudence, to protect a minor's constitutional rights.

78. As to the "Convention" lawfulness including the arbitrariness of the detention, the Court recalls that Mr Bouamar (a minor at the relevant time) was detained in a remand prison nine times (a total of 119 days during a period of 291 days) as a preliminary measure to ensure his placement under "educational supervision". The Court found as follows (at paragraphs 50-53):

> "50. ... The Court notes the confinement of a juvenile in a remand prison does not necessarily contravene sub-paragraph (d), even if it is not in itself such as to provide for the person's "educational supervision". As is apparent from the words "for the purpose of" ("*pour*"), the "detention" referred to in the text is a means of ensuring that the person concerned is placed under "educational supervision", but the placement does not necessarily have to be an immediate one. Just as Article 5 § 1 recognises ... the distinction between pre-trial detention and detention after conviction, so sub-paragraph (d) does not preclude an interim custody measure being used as a

preliminary to a regime of supervised education, without itself involving any supervised education. In such circumstances, however, the imprisonment must be speedily followed by actual application of such a regime in a setting (open or closed) designed and with sufficient resources for the purpose.

...

52. In the Government's submission, the placements complained of were part of an educative programme initiated by the courts, and Mr Bouamar's behaviour during the relevant time enabled them to gain a clearer picture of his personality.

The Court does not share this view. The Belgian State chose the system of educational supervision with a view to carrying out its policy on juvenile delinquency. Consequently it was under an obligation to put in place appropriate institutional facilities which met the demands of security and the educational objectives of the 1965 Act, in order to be able to satisfy the requirements of Article 5 § 1 (d) of the Convention ... Nothing in the evidence, however, shows that this was the case. At the time of the events in issue, Belgium did not have – at least in the French-speaking region in which the applicant lived – any closed institution able to accommodate highly disturbed juveniles. ... The detention of a young man in a remand prison in conditions of virtual isolation and without the assistance of staff with educational training cannot be regarded as furthering any educational aim. ...

53. The Court ... concludes that the nine placement orders, taken together, were not compatible with sub-paragraph (d). Their fruitless repetition had the effect of making them less and less "lawful" under sub-paragraph (d), especially as Crown Counsel never instituted criminal proceedings against the applicant in respect of the offences alleged against him."

79. The Court notes that the detention orders impugned in the present case were made against the background of enduring and considerable efforts by various authorities to ensure the best possible care and upbringing for the applicant. Nevertheless, the Court's case-law, outlined above, provides that if the Irish State chose a constitutional system of educational supervision implemented through court orders to deal with juvenile delinquency, it was obliged to put in place appropriate institutional facilities which met the security and educational demands of that system in order to satisfy the requirements of Article 5 § 1 (d).

80. It is also accepted that, in the context of the detention of minors, the words "educational supervision" must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned (see *Koniarska*, cited above).

81. However, the Court does not consider, and indeed, it does not appear to be argued by the Government, that St Patrick's itself constituted "educational supervision". As noted above, it was a penal institution and the applicant was subjected to its disciplinary regime. The educational and other recreation services were entirely voluntary and the applicant's history was

demonstrative of an unwillingness to cooperate with the authorities: indeed the Government accept that he did not avail himself of the educational facilities. There is no entry in the applicant's "prison" file, in the medical or psychiatric reports submitted or any specific submission by the Government detailing any instruction received by the applicant during his detention in St Patrick's. The only indication of his participation in recreational activities is a brief reference to his playing football in a medical report (see paragraph 43 above). Most importantly, the High Court itself was convinced that St Patrick's could not guarantee his constitutional educational rights or provide the special care he required: even with the special conditions the High Court attached to his detention, the High Court considered St Patrick's to be the best of four inappropriate options and that, accordingly, his detention there should be temporary.

82. The question remains whether the applicant's detention in St Patrick's constituted an "interim custody" measure "for the purpose of" an educational supervisory regime which was followed "speedily" by the application of such a regime.

83. The Court notes that the High Court made its first detention order (on 27 June 1997) when no secure educational facilities were available in Ireland: the Board was to continue to look for a placement outside the jurisdiction. That order was renewed on the same basis on 18 July 1997. The third order (of 23 July 1997) prolonged his detention on the basis that temporary "accommodation and care" facilities were being prepared and would be ready by 28 July 1997. Subsequent events demonstrated that those facilities were not secure (the applicant absconded) and the High Court clearly considered those facilities inappropriate as it then ordered the applicant's further detention in St Patrick's in August 1997, eighteen days after he had been released therefrom. Thereafter he lived in the same temporary accommodation and worked at City Motor Sports. By 16 February 1998 he had been moved to further short-term accommodation with 24-hour supervision.

84. In such circumstances, the Court does not find that the applicant's detention in June and July 1997 in St Patrick's can be considered to have been an interim custody measure preliminary to a regime of supervised education. The first two detention orders of the High Court were not based on any specific proposal for his secure and supervised education and the third order was based on a proposal for temporary accommodation which, in any event, turned out to be neither secure nor appropriate and which inevitably led to yet another order of the High Court detaining the applicant in St Patrick's. Even if it could be assumed that his detention from February 1998 was sufficiently secure and educationally appropriate, this was put in place more than six months after his release from St Patrick's in July 1997.

85. Accordingly, the Court concludes that the applicant's detention in St Patrick's between 27 June and 28 July 1997 was not compatible with

Article 5 § 1 (d) of the Convention. No other basis for justifying the applicant's detention having been advanced, the Court finds that the applicant was detained in breach of Article 5 § 1.

II. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

86. Article 5 § 5 of the Convention reads as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

87. The applicant claimed that there was no enforceable right to compensation for that breach of Article 5 § 1 in violation of Article 5 § 5. The Government submitted that there has been no violation of Article 5 § 1 and therefore none of Article 5 § 5.

88. The Court has found that the applicant's detention constituted a violation of Article 5 § 1 and that the detention orders were lawful in domestic law. The Convention has not been incorporated into Irish law and the Government do not argue that there is an enforceable right to compensation for a breach of the "Convention" lawfulness of detention.

89. It concludes that the applicant had no enforceable right to compensation in violation of Article 5 § 5 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

90. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

91. The applicant complained that three matters concerning his detention in St Patrick's amounted to inhuman and degrading treatment and punishment. In the first place, he was a minor in need of special care but detained in a penal institution. Secondly, his unique status (as someone not charged or convicted) caused other detainees to believe that he was a serious sexual offender leading to his being insulted, humiliated, threatened and abused. Thirdly, he was handcuffed to a prison officer each time he was brought before the High and Supreme Courts and only released from the handcuffs before the Supreme Court following his counsel's application. His handcuffing, when he was not charged or convicted and was a minor with special needs, was entirely ill-conceived, not necessary and humiliating.

92. The Government argued that the applicant's detention in St Patrick's did not constitute "punishment": it was an unfortunate but temporary measure rendered necessary because of the danger the applicant posed to himself and to others.

93. In any event and while the Government accepted that his detention would have been distressing, the conditions in St Patrick's were not, of themselves, inhuman or degrading taking account the duration of the detention, the physical and mental state of the applicant and the physical and mental effects of detention on him. He had already been in that institution (February-March 1997). An array of educational and recreational facilities were available, but he chose not to use them. The conditions imposed by the High Court tempered the prison regime applicable to him. The applicant was not subjected to any inhuman or degrading treatment in the institution and they were not aware of any complaint made by him concerning the medical, psychiatric, educational or other facilities at St Patrick's. As regards his being handcuffed, the Government pointed out that it was the policy that all inmates of St Patrick's be handcuffed and/or chained to staff while being brought to court, a measure which was necessary given the danger the applicant posed to himself and to others.

94. The applicant argued in response that the assessment of the treatment suffered by him is a subjective test and must take account of the physical and mental effects on him as well as his age, history, status and special needs. Indeed, it was sufficient if the applicant had been humiliated in his own eyes. He considered that his incarceration amounted to punishment: it was a penal institution and he was subject to its disciplinary regime. Whatever the intention, the effect on him was punishment. Moreover, that punishment and his treatment in St Patrick's was inhuman and degrading for the three reasons outlined in his initial complaint.

95. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). Such treatment may be considered degrading if it is such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (ibid., pp. 66-67, § 167). Moreover, it is sufficient if the victim is humiliated in his or her own eyes (see *Tyrer v. the United Kingdom*, judgment of 25 April 1978, Series A no. 26, p. 16, § 32, and *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI).

96. The Court accepts that the intent of the High Court, in ordering the applicant's detention, was protective and that, without more, it could not be concluded that it constituted “punishment” within the meaning of that term in Article 3.

97. Neither does the Court consider that the evidence submitted supports a conclusion that his detention (as a minor, not charged or convicted of any offence) in a penal institution could, of itself, constitute “inhuman or

degrading" treatment (see *Aerts*, cited above, p. 1966, §§ 64-66). It is noted that the Court rejected Mr Aerts's complaint under Article 3 about his detention, when he was mentally ill, in the psychiatric wing of a prison which was accepted to be sub-standard. In the present case, the applicant was detained in a prison where a significant portion of the detainees were the same age as, or close in age to, the applicant. It was a penal institution with a regime adapted to juvenile detainees with particular educational and recreational activities of which facilities the applicant could have availed himself. That regime was further tempered, in the applicant's case, by the specific conditions imposed by the High Court (concerning access to, assessment of and reporting on the applicant), which conditions the applicant does not dispute were complied with. Furthermore, the fact that the applicant was subject to prison discipline does not, of itself, give rise to an issue under Article 3 given that it constituted restraint for his and for other's safety in light of his history of criminal activity, of self-harm and of violence to others (see *Herczegfalvy v. Austria*, judgment of 24 September 1992, Series A no. 244, pp. 25-26, §§ 82-83).

98. As to any treatment of the applicant over and above that of a detainee in St Patrick's penal institution subject to its disciplinary regime, the Court notes that there is no psychological, medical or other expert evidence submitted to this Court substantiating the mental or physical impact alleged by the applicant. Even assuming that the feelings of depression, frustration and anger to which the above-described medical report referred (at paragraph 43) were caused by the applicant's incarceration (and it is noted that he had already been diagnosed as having a personality disorder), neither the prescribed treatment, the medical officer's view that the applicant was "quite well" or the consultant psychiatrist's diagnosis (see paragraph 44 above) demonstrate that the impact on him of his detention amounted to treatment falling within the scope of Article 3. Indeed, the applicant had been in St Patrick's in early 1997 and the High Court found on the evidence that he appeared to have done well there. Moreover, he has provided no evidence of the allegation, made in his initial application, that he was ill-treated by fellow inmates consequent on his unique status in that institution and indeed he only referred, without further substantiation or elaboration, to this matter in his first observations.

99. As to his being handcuffed, the Court recalls that in *Raninen v. Finland*, it did not find that handcuffing in public amounted to a violation of Article 3 although it had already found a legality problem under Article 5 § 1 relating to the same period of detention (judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821-22, §§ 55-59). In addition, the Court does not consider that the fact that he was a minor is sufficient to bring the handcuffing of the applicant within the scope of Article 3: he was, as any adult could be, considered by the High Court to be a danger to himself and to others in light of his history of criminal activity, of self-harm and of

violence to others. The intent behind his being handcuffed was his reasonable restraint (see *Raninen*, cited above, p. 2822, § 56).

100. The Court therefore finds that there has been no violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

101. The relevant parts of Article 8 of the Convention read as follows:

> "1. Everyone has the right to respect for his private and family life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

102. The applicant contended that his detention constituted an unjustifiable interference with his private and family life, his physical and moral integrity and with his honour, good name and reputation. He referred to restrictions consequent on his detention and, in particular, to the lack of a lawful basis for his detention, to his being handcuffed for his court appearances during his detention and to his position as a minor (without charge or conviction) in a penal institution.

103. The Government maintained that, given the evidence before the High Court, that court's reasons for its detention orders and the conditions imposed by that court, there was no interference with the applicant's right to respect for his family or private life. Indeed, they argue that he did not have a family life for a considerable period of time prior to the relevant period of detention. Alternatively, any interference with his private or family life was in accordance with the law, had a legitimate aim (the protection of the applicant and others and the prevention of disorder and crime) and was necessary in a democratic society: given the State's margin of appreciation, it was a proportionate response to the legitimate aim sought to be achieved.

104. The Court recalls that any interference with an individual's right to respect for his private and family life will constitute a breach of Article 8, unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" in the sense that it was proportionate to the aims sought to be achieved.

105. It is true that the notion of private life may, depending on the circumstances, cover the moral and physical integrity of the person which in turn may extend to situations covering deprivations of liberty. There may therefore be circumstances in which Article 8 could be regarded as affording protection in respect of conditions of detention which do not attain the level of severity required by Article 3 (see *Raninen*, cited above, p. 2833, § 63). However, normal restrictions and limitations consequent on prison life and discipline during lawful detention are not matters which

would constitute a violation of Article 8 either because they are considered not to constitute an interference with the detainee's private and family life (see *X v. the United Kingdom*, no. 9054/80, Commission decision of 8 October 1982, Decisions and Reports (DR) 30, p. 113, and *Raninen*, cited above, p. 2823, § 64) or because any such interference would be justified (see *Wakefield v. the United Kingdom*, no. 15817/89, Commission decision of 1 October 1990, DR 66, p. 251).

106. In the present case, the applicant maintained that three matters brought his detention beyond the restrictions and limitations normally consequent on prison life.

107. He referred, in the first place, to his detention being unlawful within the meaning of Article 5 § 1. However, given its reasoning noted above leading to a violation of Article 5 § 1, the Court does not consider that this issue alone gives rise to any separate issue under Article 8.

108. Secondly, the applicant argued that his detention, as a minor not charged or convicted of a criminal offence and in a penal institution, constituted an unjustifiable interference with his private and family life. The conditions of the applicant's detention in St Patrick's are noted at paragraph 97 above and the Court has already found his allegations about ill-treatment by fellow inmates to be unsubstantiated (see paragraph 98 above). The Court has also found the relevant detention orders to have been in accordance with domestic law (see paragraph 77 above). In such circumstances, the Court concludes that, even assuming the above-described restrictions and limitations consequent on life and discipline in St Patrick's constituted an interference with the applicant's private and family life, they would be proportionate to the legitimate aims sought to be achieved.

109. Thirdly, he complained about his being handcuffed for his appearances in court. However, the Court does not consider that the present case discloses any interference with the rights guaranteed under Article 8 as regards his being handcuffed (see *Raninen*, cited above, p. 2823, § 64).

110. Accordingly, the Court concludes that the applicant's complaint concerning the lawfulness of his detention does not give rise to any separate issue under Article 8 and that otherwise there has not been a violation of Article 8 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

111. The applicant further argued that he was discriminated against as regards all of the above matters on the grounds of his social origin, birth or “other status”. He was discriminated against as compared to other minors (he was not placed in specialised residential institution aimed at the proper care of minors), as compared to adults (as no adult could have been detained in a penal institution in such circumstances) and as compared to other

citizens (as he was detained in a penal institution without having been charged or convicted of a criminal offence).

112. The relevant part of Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national or social origin, ... birth or other status."

113. The Government submitted that the applicant must demonstrate that there was a relevant difference in treatment, that it had no legitimate aim and that the treatment was not proportionate to that aim. While he was undoubtedly treated differently to other minors, adults and citizens, that is not the relevant distinction. The real question is whether he was treated differently to other minors in the same position and he clearly was not – any other minor with the same problems would have been treated similarly. Even if the Court finds that he was treated differently to other minors, the Government argue that any such treatment had a legitimate aim and was proportionate. The applicant maintained his allegations of discrimination.

114. The Court considers that this complaint should be examined in conjunction with Article 5 § 1 of the Convention, the applicant essentially complaining that he was discriminated against by his detention in St Patrick's. In this respect, the Court has found that his detention violated Article 5 § 1, none of the permitted bases of detention being found to apply to the applicant's case.

115. However, and even assuming that there would be a difference in treatment between minors requiring containment and education and adults with the same requirements, any such difference in treatment would not be discriminatory stemming as it does from the protective regime which is applied through the courts to minors in the applicant's position. In the Court's view, there is accordingly an objective and reasonable justification for any such difference of treatment (see *Bouamar*, cited above, pp. 25-26, §§ 66-67). In so far as he compares his situation to that of other minors, the Court considers that no separate issue arises given that it raises the same issue which lies at the heart of the Article 5 complaint in respect of which the Court has found a violation of the Convention.

116. The Court concludes that there has been no violation of Article 14 of the Convention in so far as he compares his situation to adults and that no separate issue arises as regards his complaint that he was discriminated against *vis-à-vis* other minors.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

118. The applicant argued that, as a result of his unlawful imprisonment, he suffered humiliation, loss, pain, upset, distress and suffering. He maintained that he was entitled to significant compensation given his age, his special needs, the fact that the authorities failed to provide for him as required, his placement in a penal institution together with his unique status and treatment within St Patrick's. He claimed 63,500 euros (EUR) in non-pecuniary damage.

119. The Government considered that it was reasonable to assume that the applicant suffered some distress and upset, but maintained that the Court must take into account the applicant's particular circumstances including the necessity for urgent action for the protection of the applicant and others and the treatment afforded to him while in detention. Regard must also be had, in particular, to the evidence as to the applicant's situation before he was detained (his family situation was described by the High Court as "quite appalling" and he had done well in St Patrick's when he had been detained there in early 1997) and to the findings of the High Court summarised at paragraph 18 above. It was only having considered all possible options before it and with "considerable reluctance" that the High Court felt bound, given its findings on the evidence, to take some action to contain the applicant. Moreover, in ordering his detention, the High Court adapted the disciplinary regime in certain respects to allow his continued assessment and care and to ensure that the authorities found a suitable solution. The High Court's review of the matter on 18 July 1997 was equally detailed and careful conditions were imposed as regards his continued detention and the search for appropriate facilities.

120. Furthermore, the Government contested that the conditions and treatment afforded to the applicant during the relevant period of detention supported any claim for non-pecuniary damage and loss. Finally, the Government referred to the justifiable nature of the applicant being handcuffed for his appearances in court.

121. As to the specific factors listed by the applicant as supporting an award for non-pecuniary damage, the Government pointed out, *inter alia*,

that he was 17 years old on 9 July 1997 and that a significant proportion of the detainees in St Patrick's were the same or close in age to the applicant. As to his special needs, it was the applicant's own inability to cooperate that led to the failure of previous placements and the conditions imposed on his detention by the High Court tailored the prison regime as much as possible to those needs. While the place of detention was a penal institution, the applicant's conduct left the High Court with no choice, favourable conditions were imposed and there was no question of punishing him. His status in the institution arose out of the very circumstances in which his case came before the High Court. He had been to St Patrick's both before and after the relevant period of detention and he did not complain about those two periods of detention.

122. Accordingly, the Government submitted that any personal distress caused to the applicant was not such as would give rise to a claim for compensation of any non-pecuniary damage.

123. The Court has found that the applicant's detention as a minor in a penal institution for thirty-one days violated Article 5 § 1 and that he did not have an enforceable right to compensation in that respect in violation of Article 5 § 5 of the Convention.

124. It has, however, rejected the applicant's complaints that the detention, in itself and in the particular circumstances alleged by him, constituted violations of Articles 3, 8 and 14. In so concluding, the Court noted that his detention was not punitive but rather protective in nature given the danger the applicant posed to himself and to others; that St Patrick's was a detention centre adapted to juvenile detainees, with a broad range of educational and recreational facilities available to all inmates; that its disciplinary regime was tailored to allow greater access to, and assessment of, the applicant by the relevant care workers; that the applicant had been detained in St Patrick's only a few months prior to the impugned period of detention and appeared to the High Court to have done well there; and that a significant portion of the detainees were of comparable age to the applicant (see, in particular, paragraphs 96-97 above). Indeed, the Court notes that the applicant's claims under Article 5 § 1 can be reduced to a disagreement about the place of detention and the presence of educational supervision, rather than the fact of secure detention itself. Moreover, the applicant's own conduct rendered his detention necessary, even if it did not render it lawful (see *Johnson v. the United Kingdom*, judgment of 24 October 1997, *Reports* 1997-VII, p. 2414, § 77).

125. In such circumstances, the Court awards, on an equitable basis, EUR 5,000 to the applicant in compensation for non-pecuniary damage.

B. Costs and expenses

126. The applicant claimed EUR 10,668 in respect of the reimbursement of his solicitors' costs and expenses in connection with his application under the Convention. He further claimed EUR 6,096 in respect of Counsel's fees. All figures are inclusive of value-added tax (VAT) and amount to a total sum of EUR 16,764.

127. The Government did not dispute the costs claimed.

128. The Court considers that the legal costs and expenses have been actually and necessarily incurred, are reasonable as to quantum and are, as such, recoverable under Article 41 of the Convention (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II, and *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX). The applicant is therefore to be reimbursed his legal costs and expenses in the sum of EUR 16,764 (inclusive of VAT) less the amounts paid to his representatives in legal aid by the Council of Europe (EUR 625.04).

129. The Court therefore awards the applicant EUR 16,138.96 in respect of his legal costs and expenses.

C. Default interest

130. According to the information available to the Court, the statutory rate of interest applicable in Ireland at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

3. *Holds* that there has been no violation of Article 3 of the Convention;

4. *Holds* that the applicant's complaint about the legality of his detention does not give rise to any separate issue under Article 8 of the Convention and that the remainder of his complaints under Article 8 do not disclose a violation of that Article;

5. *Holds* that the applicant's complaint about his situation as compared to other minors does not give rise to any separate issue under Article 14 of

the Convention taken in conjunction with Article 5 § 1 and that the remainder of his complaints under Article 14 taken in conjunction with Article 5 § 1 do not disclose a violation of those Articles;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 4 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 16,138.96 (sixteen thousand, one hundred and thirty-eight euros ninety-six cents) in respect of costs and expenses, the latter sum being inclusive of any value-added tax that may be chargeable;

(b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President