

## Judgment of the European Court of Human Rights, Lawless v Ireland (1 July 1961)

**Caption:** First judgment given by the European Court of Human Rights. The Court rules that there has been no violation of Article 7 of the European Convention on Human Rights (no punishment without law).

**Source:** European Court of Human Rights (ECHR), Case of Lawless v. Ireland. Judgment of 1 July 1961 (Series A, No 3). HUDOC - Human Rights Documentation. [ON-LINE]. [Strasbourg]: [15.05.2003]. Available on <http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>.

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**Publication date:** 23/10/2012

## Judgment of the European Court of Human Rights of 1 July 1961 Case of Lawless v. Ireland (No 3)

In the "Lawless" Case,

The European Court of Human Rights, sitting, in accordance with the provisions of Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") and of Rules 21 and 22 of Rules of the Court, as a Chamber composed of:

Mr. R. CASSIN, President

and MM. G. MARIDAKIS

E. RODENBOURG

R. McGONIGAL, ex officio member

G. BALLADORE PALLIERI

E. ARNALDS

K.F. ARIK, Judges

P. MODINOS, Registrar,

delivers the following judgment:

### **As to the Procedure**

1. The present case was referred to the Court on 13th April 1960 by the European Commission of Human Rights (hereinafter called "the Commission") dated 12th April 1960. Attached to the request was the Report drawn up by the Commission in accordance with Article 31 (art. 31) of the Convention. The case relates to the Application submitted to the Commission under Article 25 (art. 25) of the Convention by G. R. Lawless, a national of the Republic of Ireland, against the Government of that State.

2. Preliminary objections and questions of procedure were raised in the present case by both the Commission and the Irish Government, Party to the case. The Court ruled on these questions in its Judgment of 14th November 1960.

The procedure followed up to that date is set forth in the Judgment.

3. Following that Judgment, the President of the Chamber, by an Order of 14th November 1960, set 16th December 1960 as the latest date by which the delegates of the Commission were to submit their Memorial and 5th February 1961 as the latest date for submission of the Irish Government's Counter-Memorial.

Pursuant to that Order, the Commission on 16th December 1960 submitted a "Statement with respect to the Counter-Memorial (merits of the case)", which was communicated to the Irish Government, Party to the case, on 19th December 1960. On 3rd February 1961, i.e. before the expiry of the allotted period, the Irish Government submitted a document entitled "Observations by the Government of Ireland on the Statement of the European Commission of Human Rights filed on 16th December 1960." That document was communicated to the delegates of the Commission on 7th February 1961, whereupon the case was ready for examination of the merits.

Before the opening of the oral proceedings, the Principal Delegate of the Commission notified the Court, by letter to the Registrar dated 14th March 1961, of the views of the Delegates of the Commission on some of

the questions raised by the Irish Government in their document of 3rd February 1961. The letter of 14th March 1961, a copy of which was sent to the Irish Government, was likewise added to the file on the case.

4. Public hearings were held at Strasbourg on 7th, 8th, 10th and 11th April 1961, at which there appeared:

for the Commission:

Sir Humphrey Waldock, President of the Commission,  
Principal Delegate,

Mr. C. Th. Eustathiades, Vice-President,

and

Mr. S. Petren, Member of the Commission,  
Assistant Delegates,

for the Irish Government, Party to the case:

Mr. A. O'Keefe, Attorney-General of Ireland, acting as Agent,

assisted by:

Mr. S. Morrissey, Barrister-at-law, Legal Adviser, Department of External Affairs,

Mr. A. J. Hederman, Barrister-at-law,  
Counsel,

and by:

MM. D. O'Donovan, Chief State Solicitor,

P. Berry, Assistant Secretary-General, Department of Justice.

5. Before entering upon the merits of the case, Sir Humphrey Waldock, Principal Delegate of the Commission, brought up certain questions of procedure made the following submission:

"May it please the Court to rule that the Delegates of the Commission are entitled:

(a) to consider as part of the proceedings in the case those written observations of the Applicant on the Commission's Report contained in paragraphs 31 to 49 of the Commission's statement of 16th December 1960, as indicated on page 15 of the Court's judgment of 14th November 1960;

(b) to make known to the Court the Applicant's point of view on any specific points arising in the course of the debates, as indicated on page 15 of the Court's judgment of 14th November 1960;

(c) to consider the person nominated by the Applicant to be a person available to give such assistance to the Delegates as they may think fit to request in order to make known to the Court the Applicant's point of view on any specific points arising in the course of the debates."

Mr. A. O'Keefe, acting as Agent of the Irish Government, said he would leave the matter to the discretion of the Court.

6. On this point of procedure the Court gave the following judgment on 7th April 1961:

"The Court,

Having regard to the conclusions presented by the Delegates of the European Commission of Human Rights at the hearing on 7th April 1961;

Taking note of the fact that the Agent of the Irish Government does not intend to submit conclusions on the matter in question;

Whereas in its judgment of 14th November 1960 the Court declared that there was no reason at this stage to authorise the Commission to transmit to it the written observations of the Applicant on the Commission's Report;

Whereas in the said judgment, of which the French text only is authentic, the Court has recognised the Commission's right to take into account ("de faire état") the Applicant's views on its own authority, as a proper way of enlightening the Court;

Whereas this latitude enjoyed by the Commission extends to any other views the Commission may have obtained from the Applicant in the course of the proceedings before the Court;

Whereas, on the other hand, the Commission is entirely free to decide by what means it wishes to establish contact with the Applicant and give him an opportunity to make known his views to the Commission; whereas in particular it is free to ask the Applicant to nominate a person to be available to the Commission's delegates; whereas it does not follow that the person in question has any locus standi in judicio;

For these reasons,

Decides unanimously:

With regard to the conclusions under (a), that at the present stage the written observations of the Applicant, as reproduced in paragraphs 31 to 49 of the Commission's statement of 16th December 1960, are not to be considered as part of the proceedings in the case;

With regard to (b) that the Commission has all latitude, in the course of debates and in so far as it believes they may be useful to enlighten the Court, to take into account the views of the Applicant concerning either the Report or any other specific point which may have arisen since the lodging of the Report;

With regard to (c), that it was for the Commission, when it considered it desirable to do so, to invite the Applicant to place some person at its disposal, subject to the reservations indicated above."

7. The Court then heard statements, replies and submissions on matters of fact and of law relating to the merits of the case, for the Commission: from Sir Humphrey Waldock, Principal Delegate; for the Irish Government: from Mr. A. O'Keefe, Attorney-General, acting as Agent.

## **As to the Facts**

### **I**

1. The purpose of the Commission's request - to which is appended the Report drawn up by the Commission in accordance with the provisions of Article 31 (art. 31) of the Convention - is to submit the case of G.R. Lawless to the Court so that it may decide whether or not the facts of the case disclose that the Irish Government has failed in its obligations under the Convention.

As appears from the Commission's request and from its Memorial, G.R. Lawless alleges in his Application that, in his case, the Convention has been violated by the authorities of the Republic of Ireland, inasmuch as, in pursuance of an Order made by the Minister of Justice under section 4 of Act No. 2 of 1940 amending the

Offences against the State Act, 1939, he was detained without trial, between 13th July and 11th December 1957, in a military detention camp situated in the territory of the Republic of Ireland.

2. The facts of the case, as they appear from the Report of the Commission, the memorials, evidence and documents laid before the Court and the statements made by the Commission and by the Irish Government during the oral hearings before the Court, are in substance as follows:

3. G.R. Lawless is a builder's labourer, born in 1936. He is ordinarily resident in Dublin (Ireland).

4. G.R. Lawless admitted before the Commission that he had become a member of the IRA ("Irish Republican Army") in January 1956. According to his own statements, he left the IRA in June 1956 and a splinter group of the IRA in December 1956.

## II

5. Under the Treaty establishing the Irish Free State, signed on 6th December 1921 between the United Kingdom and the Irish Free State, six counties situated in the North of the Island of Ireland remained under British sovereignty.

6. On several occasions since the foundation of the Irish Free State, armed groups, calling themselves the "Irish Republican Army" (IRA), have been formed, for the avowed purpose of carrying out acts of violence to put an end to British sovereignty in Northern Ireland. At times the activities of these groups have been such that effective repression by the ordinary process of law was not possible. From time to time, the legislature has, therefore, conferred upon the Government special powers deal with the situation created by these unlawful activities; and such powers have sometimes included the power of detention without trial.

On 29th December 1937 the Constitution at present in force in the Irish Republic was promulgated. In May 1938 all persons detained for political offences were released.

When the political situation in Europe foreshadowed war, the IRA resumed its activities and committed fresh acts of violence.

At the beginning of 1939 the IRA published documents described by it as a "declaration of war on Great Britain". Following that declaration, the IRA, operating from territory of the Republic of Ireland, intensified its acts of violence on British territory.

7. In order to meet the situation created by the activities of the IRA, the Parliament of the Republic of Ireland passed the Offences against the State Act, 1939, which came into force on 14th June 1939.

## III

8. Part II of the 1939 Act defines the "activities prejudicial to the preservation of public peace and order or to the security of the State". Part III contains provisions relating to organisations whose activities come under the Act and any which may therefore be declared an "unlawful organisation" by order of the Government. Section 21 of the 1939 Act provides as follows:

"(1) It shall not be lawful for any person to be a member of an unlawful organisation;

(2) Every person who is a member of an unlawful organisation in contravention of this section shall be guilty of an offence under this section and shall:

(a) on summary conviction thereof, be liable to a fine not exceeding fifty pounds, or at the discretion of the court, to imprisonment for a term not exceeding three months or to both such fine and such imprisonment; or

(b) on conviction thereof on indictment, be liable to imprisonment for a term not exceeding two years."

Part IV of the 1939 Act contains various provisions relating to the repression of unlawful activities, including, in section 30, the following provision relating to the arrest and detention of persons suspected of being concerned in unlawful activities:

Section 30:

"(1) A member of the *Gárda Síochána* (if he is not in uniform on production of his identity card if demanded) may without warrant stop, search, interrogate, and arrest any person, or do any one or more of those things in respect of any person, whom he suspects of having committed or being about to commit or being or having been concerned in the commission of an offence under any section or sub-section of this Act, or an offence which is for the time being a scheduled offence for the purposes of Part V of this Act or whom he suspects of carrying a document relating to the commission or intended commission of any such offence as aforesaid.

(2) Any member of the *Gárda Síochána* (if he is not in uniform on production of his identity card if demanded) may, for the purpose of the exercise of any of the powers conferred by the next preceding sub-section of this section, stop and search (if necessary by force) any vehicle or any ship, boat, or other vessel which he suspects to contain a person whom he is empowered by the said sub-section to arrest without warrant.

(3) Whenever a person is arrested under this section, he may be removed to and detained in custody in a *Gárda Síochána* station, a prison, or some other convenient place for a period of twenty-four hours from the time of his arrest and may, if an officer of the *Gárda Síochána* not below the rank of Chief Superintendent so directs, be so detained for a further period of twenty-four hours.

(4) A person detained under the next preceding sub-section of this section may, at any time during such detention, be charged before the District Court or a Special Criminal Court with an offence, or be released by direction of an officer of the *Gárda Síochána*, and shall, if not so charged or released, be released at the expiration of the detention authorised by the said sub-section.

(5) A member of the *Gárda Síochána* may do all or any of the following things in respect of a person detained under this section, that is to say:

- (a) demand of such person his name and address;
- (b) search such person or cause him to be searched;
- (c) photograph such person or cause him to be photographed;
- (d) take, or cause to be taken, the fingerprints of such person.

(6) Every person who shall obstruct or impede the exercise in respect of him by a member of the *Gárda Síochána* of any of the powers conferred by the next preceding sub-section of this section or shall fail or refuse to give his name and address or shall give, in response to any such demand, a name or an address which is false or misleading shall be guilty of an offence under this section and shall be liable on summary conviction thereof to imprisonment for a term not exceeding six months."

Part V of the 1939 Act is concerned with the establishment of "Special Criminal Courts" to try persons charged with offences under the Act.

Lastly, Part VI of the 1939 Act contained provisions authorising any Minister of State - once the Government had brought that Part of the Act into force - to order, in certain circumstances, the arrest and detention of any person whom he was satisfied was engaged in activities declared unlawful by the Act.

9. On 23rd June 1939, i.e. nine days after the entry into force of the Offences Against the State Act, the Government made an order under section 19 of the Act that the IRA, declared an "unlawful organisation", be dissolved.

10. About 70 persons were subsequently arrested and detained under Part VI of the Act. One of those persons brought an action in the High Court of Ireland, challenging the validity of his detention. The High Court declared the detention illegal and ordered the release of the person concerned by writ of habeas corpus.

The Government had all the persons detained under the same clauses released forthwith.

11. Taking note of the High Court's judgment, the Government tabled in Parliament a Bill to amend Part VI of the Offences against the State Act, 1939. The Bill, after being declared constitutional by the Supreme Court, was passed by Parliament on 9th February 1940, becoming the Offences against the State (Amendment) Act, 1940 (No. 2 of 1940).

This Act No. 2 of 1940 confers on Ministers of State special powers of detention without trial, "if and whenever and so often as the Government makes and publishes a proclamation declaring that the powers conferred by this Part of this Act are necessary to secure the preservation of public peace and order and that it is expedient that this Part of this Act should come into force immediately" (section 3, sub-section (2) of the Act).

Under section 3, sub-section (4) of the Act, however, a Government proclamation bringing into force the special powers of detention may be annulled at any time by a simple resolution of the Lower House of the Irish Parliament.

Moreover, under section 9 of the Act both Houses of Parliament must be kept fully informed, at regular intervals, of the manner in which the powers of detention have been exercised.

12. The powers of detention referred to in the Act are vested in Ministers of State. Section 4 of the Act provides as follows:

"(1) Whenever a Minister of State is of opinion that any particular person is engaged in activities which, in his opinion, are prejudicial to the preservation of public peace and order or to the security of the State, such Minister may by warrant under his hand and sealed with his official seal order the arrest and detention of such person under this section.

(2) Any member of the *Gárda Síochána* may arrest without warrant any person in respect of whom a warrant has been issued by a Minister of State under the foregoing sub-section of this section.

(3) Every person arrested under the next preceding sub-section of this section shall be detained in a prison or other place prescribed in that behalf by regulations made under this Part of this Act until this Part of this Act ceases to be in force or until he is released under the subsequent provisions of this Part of this Act, whichever first happens.

(4) Whenever a person is detained under this section, there shall be furnished to such person, as soon as may be after he arrives at a prison or other place of detention prescribed in that behalf by regulations made under this Part of this Act, a copy of the warrant issued under this section in relation to such person and of the provisions of section 8 of this Act".

13. Under section 8 of the Offences against the State (Amendment) Act, 1940, the Government is required to set up, as soon as conveniently may be after the entry into force of the powers of detention without trial, a Commission (hereinafter referred to as "Detention Commission") to which any person arrested or detained under the Act may apply, through the Government, to have his case considered. The Commission is to consist of three persons, appointed by the Government, one to be a commissioned officer of the Defence

Forces with not less than seven years' service and each of the others to be a barrister or solicitor of not less than seven years' standing or a judge or former judge of one of the ordinary courts. Lastly, section 8 of the Act provides that, if the Commission reports that no reasonable grounds exist for the continued detention of the person concerned, such person shall, with all convenient speed, be released.

#### IV

14. After several years during which there was very little IRA activity, there was a renewed outbreak in 1954 and again in the second half of 1956.

In the second half of December 1956 armed attacks were made on a number of Northern Ireland police barracks and at the end of the month a policeman was killed. In the same month a police patrol on border roads was fired on, trees were felled across roads and telephone wires cut, etc. In January 1957 there were more incidents of the same kind. At the beginning of the month there was an armed attack on Brookeborough Police Barracks during which two of the assailants were killed; both of them came from the 26-county area. Twelve others, of whom four were wounded, fled across the border and were arrested by the police of the Republic of Ireland. Thereupon, the Prime Minister of the Republic of Ireland, in a public broadcast address on 6th January 1957, made a pressing appeal to the public to put an end to these attacks.

Six days after this broadcast, namely, on 12th January 1957, the IRA carried out an armed raid on an explosives store in the territory of the Republic of Ireland, situated at Moortown, County Dublin, for the purpose of stealing explosives. On 6th May 1957, armed groups entered an explosives store at Swan Laois, held up the watchman and stole a quantity of explosives.

On 18th April 1957, the main railway line from Dublin to Belfast was closed by an explosion which caused extensive damage to the railway bridge at Ayallogue in County Armagh, about 5 miles on the northern side of the border.

During the night of 25th-26th April, three explosions between Lurgan and Portadown, in Northern Ireland, also damaged the same railway line.

On the night of 3rd/4th July a Northern Ireland police patrol on duty a short distance from the border was ambushed. One policeman was shot dead and another injured. At the scene of the ambush 87 sticks of gelignite were found to have been placed on the road and covered with stones, with wires leading to a detonator.

This incident occurred only eight days before the annual Orange Processions which are widespread throughout Northern Ireland on 12th July. In the past, this date has been particularly critical for the maintenance of peace and public order.

#### V

15. The special powers of arrest and detention conferred upon the Ministers of State by the 1940 (Amendment) Act were brought into force on 8th July 1957 by a Proclamation of the Irish Government published in the Official Gazette on 5th July 1957.

On 16th July 1957, the Government set up the Detention Commission provided for in section 8 of that Act and appointed as members of that Commission an officer of Defence Forces, a judge and a district Justice.

16. The Proclamation by which the Irish Government brought into force on 8th July 1957 the special powers of detention provided for in Part II of the 1940 Act (No. 2) read as follows:

"The Government, in exercise of the powers conferred on them by sub-section (2) of section 3 of the Offences against the State (Amendment) Act, 1940, (No. 2 of 1940), hereby declare that the powers conferred by Part II of the said Act are necessary to secure the preservation of public peace and order and



that it is expedient that the said part of the said Act should come into force immediately."

17. By letter of 20th July 1957 the Irish Minister for External Affairs informed the Secretary-General of the Council of Europe that Part II of the Offences against the State Act, 1940 (No. 2) had come into force on 8th July 1957.

Paragraph 2 of that letter read as follows:

"... Insofar as the bringing into operation of Part II of the Act, which confers special powers of arrest and detention, may involve any derogation from the obligations imposed by the Convention for the Protection of Human Rights and Fundamental Freedoms, I have the honour to request you to be good enough to regard this letter as informing you accordingly, in compliance with Article 15 (3) (art. 15-3) of the Convention."

The letter pointed out that the detention of persons under the Act was considered necessary "to prevent the commission of offences against public peace and order and to prevent the maintaining of military or armed forces other than those authorised by the Constitution."

The Secretary-General's attention was called to section 8 of the Act which provides for the establishment of a Commission to which any detained person can appeal. This Commission was set up on 16th July 1957.

18. Soon after the publication of the Proclamation of 5th July 1957 bringing into force the powers of detention provided for under the 1940 Act, the Prime Minister of the Government of the Republic of Ireland announced that the Government would release any person held under that Act who undertook "to respect the Constitution and the laws of Ireland" and "to refrain from being a member of or assisting any organisation declared unlawful under the Offences against the State Act, 1939".

## VI

19. G.R. Lawless was first arrested with three other men on 21st September 1956 in a disused barn at Keshcarrigan, County Leitrim. The police discovered in the barn a Thompson machine-gun, six army rifles, six sporting guns, a revolver, an automatic pistol and 400 magazines. Lawless admitted that he was a member of the IRA and that he had taken part in an armed raid when guns and revolvers had been stolen. He was subsequently charged on 18th October with unlawful possession of firearms under the Firearms Act, 1935 and under Section 21 of the Offences against the State Act, 1939.

G.R. Lawless, together with the other accused, was sent forward for trial to the Dublin Circuit Criminal Court. On 23rd November 1956, they were acquitted of the charge of unlawful possession of arms. The trial judge had directed the jury that the requirements for proving the accused's guilt had not been satisfied in that it not been conclusively shown that no competent authority had issued a firearm certificate authorising him to be in possession of the arms concerned.

At the hearing before this Court on 26th October, the District Justice asked one of the accused, Sean Geraghty, whether he wished to put any questions to any of the policemen present. Sean Geraghty replied as follows:

"As a soldier of the Irish Republican Army and as leader of these men, I do not wish to have any part in proceedings in this Court."

When asked by the Justice whether he pleaded guilty or not guilty to the charge, he again said:

"On behalf of my comrades and myself I wish to state that any arms and ammunition found on us were to be used against the British Forces of occupation to bring about the re-unification of our country and no Irishman or woman of any political persuasion had anything to fear from us. We hold that it is legal to possess arms and also believe it is the duty of every Irishman to bear arms in defence of his country."

Subsequently, G.R. Lawless in reply to a question by the Justice said: "Sean Geraghty spoke for me."

Lawless was again arrested in Dublin on 14th May 1957 under section 30 of the 1939 Act, on suspicion of engaging in unlawful activities. A sketch map for an attack of certain frontier posts between the Irish Republic and Northern Ireland was found on him bearing the inscription "Infiltrate, annihilate and destroy."

On the same day his house was searched by the police who found a manuscript document on guerilla warfare containing, inter alia, the following statements:

"The resistance movement is the armed vanguard of the Irish people fighting for the freedom of Ireland. The strength of the movement consists in the popular patriotic character of the movement. The basic mission of local resistance units are the destruction of enemy installations and establishments, that is TA halls, special huts, BA recruiting offices, border huts, depots, etc.

Attacks against enemy aerodromes and the destruction of aircraft hangars, depots of bombs and fuel, the killing of key flying personnel and mechanics, the killing or capture of high-ranking enemy officers and high officials of the enemy's colonial Government and traitors to our country in their pay, that is, British officers, police agents, touts, judges, high members of the Quisling party, etc."

After being arrested, G.R. Lawless was charged:

- (a) with possession of incriminating documents contrary to section 12 of the 1939 Act;
- (b) with membership of an unlawful organisation, the IRA, contrary to section 21 of the 1939 Act.

On 16th May 1957, G.R. Lawless was brought before the Dublin District Court together with three other men who were also charged with similar offences under the 1939 Act. The Court convicted Lawless on the first charge and sentenced him to one month's imprisonment; it acquitted him on the second charge. The Court record showed that the second charge was dismissed "on the merits" of the case but no official report of the proceedings appears to be available. The reasons for this acquittal were not clearly established. G.R. Lawless was released on about 16th June 1957, after having served his sentence in Mountjoy Prison, Dublin.

20. G.R. Lawless was re-arrested on 11th July 1957 at Dun Laoghaire by Security Officer Connor when about to embark on a ship for England. He was detained for 24 hours at Bridewell Police Station in Dublin under section 30 of the 1939 Act, as being a suspected member of an unlawful organisation, namely the IRA.

Detective-Inspector McMahon told the Applicant on the same day that he would be released provided that he signed an undertaking in regard to his future conduct. No written form of the undertaking proposed was put to G.R. Lawless and its exact terms are in dispute.

On 12th July 1957, the Chief Superintendent of Police, acting under section 30, sub-section 3 of the 1939 Act, made an order that G.R. Lawless be detained for a further period of 24 hours expiring at 7.45 p.m. on 13th July 1957.

At 6 a.m. on 13th July 1957, however, before Lawless' detention under section 30 of the 1939 Act had expired, he was removed from the Bridewell Police Station and transferred to the military prison in the Curragh, Co. Kildare (known as the "Glass House"). He arrived there at 8 a.m. on the same day and was detained from that time under an order made on 12th July 1957 by the Minister for Justice under section 4 of the 1940 Act. Upon his arrival at the "Glass House", he was handed a copy of the above-mentioned detention order in which the Minister for Justice declared that G.R. Lawless was, in his opinion, engaged in activities prejudicial to the security of the State and he ordered his arrest and detention under section 40 of the 1940 Act. From the "Glass House", G.R. Lawless was transferred on 17th July 1957 to a camp known as the "Curragh Internment Camp", which forms part of the Curragh Military Camp and Barracks in County Kildare, and together with some 120 other persons, was detained there without charge or trial until 11th

December 1957 when he was released.

21. On 16th August 1957 G.R. Lawless was informed that he would be released provided he gave an undertaking in writing "to respect the Constitution and laws of Ireland" and not to "be a member of or assist any organisation which is an unlawful organisation under the Offences against the State Act, 1939." G.R. Lawless declined to give this undertaking.

22. On 8th September 1957 G.R. Lawless exercised the right, conferred upon him by section 8 of the 1940 Act, to apply to have the continuation of his detention considered by the Detention Commission set up under the same section of that Act. He appeared before that Commission on 17th September 1957 and was represented by counsel and solicitors. The Detention Commission, sitting for the first time, adopted certain rules of procedure and adjourned until 20th September.

23. On 18th September 1957, however, G.R. Lawless' counsel also made an application to the Irish High Court, under Article 40 of the Irish Constitution, for a Conditional Order of habeas corpus ad subjiciendum. The object of the application was that the Court should order the Commandant of the detention camp to bring G.R. Lawless before the Court in order that it might examine and decide upon the validity of detention. A Conditional Order of habeas corpus would have the effect of requiring the Commandant to "show cause" to the High Court why he should not comply with that Order.

The Conditional Order was granted on the same date and was served on the Commandant giving him a period of four days to "show cause". It was also served upon the Detention Commission. The Detention Commission sat on 20th September 1957, and decided to adjourn the hearing sine die pending the outcome of the habeas corpus application.

24. G.R. Lawless then applied, by a motion to the High Court, to have the Conditional Order made "absolute", notwithstanding the fact that the Commandant of the Detention Camp had in the meantime "shown cause" opposing this application. The Commandant had, in this connection, relied upon the order for the Applicant's detention which had been made by the Minister for Justice.

The High Court sat from 8th to 11th October 1957 and heard full legal submissions by counsel for both parties. On 11th October it gave judgment allowing the "cause shown" by the camp Commandant to justify detention. The habeas corpus application was therefore dismissed.

25. On 14th October 1957 G.R. Lawless appealed to the Supreme Court, invoking not only the Constitution and laws of Ireland but also the European Convention of Human Rights. On 6th November the Supreme Court dismissed G.R. Lawless' appeal. It gave its reasoned judgment on 3rd December 1957.

The main grounds of the Supreme Court's judgment were as follows:

(a) The 1940 Act, when in draft form as a Bill, had been referred to the Supreme Court for decision as to whether it was repugnant to the Irish Constitution. The Supreme Court had decided that it was not repugnant and Article 34 (3) 3 of the Constitution declared that no court had competence to question the constitutional validity of a law which had been approved as a Bill by the Supreme Court.

(b) The Oireachtas (i.e. the Parliament) which was the sole legislative authority had not introduced legislation to make the Convention of Human Rights part of the municipal law of Ireland. The Supreme Court could not, therefore, give effect to the Convention if it should appear to grant rights other than, or supplementary to, those provided under Irish municipal law.

(c) The appellant's period of detention under section 30 of the 1939 Act was due to expire at 7.45 p.m. on 13th July 1957. At that time he was already being detained under another warrant issued by the Minister for Justice and his detention without release was quite properly continued under the second warrant.

(d) The appellant had not established a prima facie case in regard to his allegation that he had not been told

the reason for his arrest under the Minister's warrant. An invalidity in the arrest, even if established, would not, however, have rendered his subsequent detention unlawful whatever rights it might otherwise have given the appellant under Irish law.

(e) The Court had already decided, when considering the 1940 Act as a Bill, that it had no power to question the opinion of a Minister who issued a warrant for detention under section 4 of that Act.

(f) The appellant in the habeas corpus proceedings before the High Court had challenged the legality of the constitution of the Detention Commission. Even if it was shown that the Commission's rulings on various procedural matters were wrong, that would not make the appellant's detention unlawful nor would it provide a basis for an application for habeas corpus. Section 8 of the 1940 Act showed that the Commission was not a court and an application before it was not a form of proceedings but no more than an enquiry of an administrative character.

26. Meanwhile, on 8th November 1957 - that is two days after the announcement of the Supreme Court's rejection of his appeal - G.R. Lawless had introduced his Application before the European Commission of Human Rights, alleging that his arrest and detention under the 1940 Act, without charge or trial, violated the Convention and he claimed:

(a) immediate release from detention;

(b) payment of compensation and damages for his detention;  
and

(c) payment of all the costs and expenses of, and incidental to the proceedings instituted by him in the Irish courts and before the Commission to secure his release.

27. Shortly afterwards the Detention Commission resumed its consideration of the case of G.R. Lawless under section 8 of the 1940 Act and held hearings for that purpose on 6th and 10th December 1957. On the latter date, at the invitation of the Attorney-General, G.R. Lawless in person before the Detention Commission gave a verbal undertaking that he would not "engage in any illegal activities under the Offences against the State Acts, 1939 and 1940", and on the following day an order was made by the Minister for Justice, under section 6 of the 1940 Act, releasing the Applicant from detention.

28. The release of G.R. Lawless from detention was notified to the European Commission of Human Rights by his solicitor in a letter dated 16th December 1957. The letter at the same time stated that G.R. Lawless intended to continue the proceedings before the Commission with regard to (a) the claim for compensation and damages for his detention and (b) the claim for reimbursement of all costs and expenses in connection with the proceedings undertaken to obtain his release.

## VII

29. At the written and oral proceedings before the Court, the European Commission of Human Rights and the Irish Government made the following submissions:

The Commission, in its Memorial of 27th June 1960:

"May it please the Court to take into consideration the findings of the Commission in its Report on the case of Gerard Richard Lawless and

(1) to decide:

(a) whether or not the detention of the Applicant without trial from 13th July to 11th December 1957 under section 4 of the Offences against the State (Amendment) Act, 1940, was in conflict with the obligations of the Respondent Government under Articles 5 and 6 (art. 5, art. 6) of the Convention;

(b) whether or not such detention was in conflict with the obligations of the Respondent Government under Article 7 (art. 7) of the Convention;

(2) if such detention was in conflict with the obligations of the Respondent Government under Articles 5 and 6 (art. 5, art. 6) of the Convention, to decide:

(a) whether or not the Government's letter to the Secretary-General of 20th July 1957 was a sufficient communication for the purposes of Article 15, paragraph (3) (art. 15-3) of the Convention;

(b) whether or not, from 13th July to 11th December 1957, there existed a public emergency threatening the life of the nation, within the meaning of Article 15, paragraph (1) (art. 15-1) of the Convention;

(c) if such an emergency did exist during that period, whether or not the measure of detaining persons without trial under section 4 of the 1940 Act, as it was applied by the Government, was a measure strictly required by the exigencies of the situation;

(3) to decide whether or not the Applicant is, in any event, precluded by Article 17 (art. 17) of the Convention from invoking the provisions of Articles 5, 6 and 7 (art. 5, art. 6, art. 7);

(4) in the light of its decisions on the questions in paragraphs 1-3 of these submissions, to adjudge and declare:

(a) whether or not the facts disclose any breach by the Respondent Government of its obligations under the Convention;

(b) if so, what compensation, if any, is due to the Applicant in respect of the breach."

30. The Agent of the Irish Government, at the public hearing on 10th April 1961:

"May it please the Court to decide and declare that the answers to the questions contained in paragraph 58 of the Commission's Memorial of 27th June 1960 are as follows:

1. (a) That the detention of the Applicant was not in conflict with the obligations of the Government under Articles 5 and 6 (art. 5, art. 6) of the Convention.

(b) That such detention was not in conflict with the obligations of the Government under Article 7 (art. 7) of the Convention.

2. (a) That the Government's letter of 20th July 1957 was a sufficient communication for the purposes of paragraph (3) of Article 15 (art. 15-3) of the Convention or, alternatively, that in the present case, the Government are not by any of the provisions of the said paragraph (3) (art. 15-3) deprived from relying on paragraph (1) of Article 15 (art. 15-1).

(b) That from 13th July 1957 to 11th December 1957 there did exist a public emergency threatening the life of the nation, within the meaning of Article 15, paragraph (1) (art. 15-1), of the Convention.

(c) That the measure of detaining persons without trial, as it was applied by the Government, was a measure strictly required by the exigencies of the situation.

3. That the Applicant is in any event precluded by Article 17 (art. 17) of the Convention from invoking the provisions of Articles 5, 6 and 7 (art. 5, art. 6, art. 7) of the Convention.

4. (a) That the facts do not disclose any breach by the Government of their obligations under the Convention.

(b) That, by reason of the foregoing, no question of compensation arises."

### The Law

1. Whereas it has been established that G.R. Lawless was arrested by the Irish authorities on 11th July 1957 under sections 21 and 30 of the Offences against the State Act (1939) No. 13; that on 13th July 1957, before the expiry for the order for arrest made under Act No. 13 of 1939, G.R. Lawless was handed a copy of a detention order made on 12th July 1957 by the Minister of Justice under section 4 of the Offences against the State (Amendment) Act 1940; and that he was subsequently detained, first in the military prison in the Curragh and then in the Curragh Internment Camp, until his release on 11th December 1957 without having been brought before a judge during that period;

2. Whereas the Court is not called upon to decide on the arrest of G.R. Lawless on 11th July 1957, but only, in the light of the submissions put forward both by the Commission and by the Irish Government, whether or not the detention of G.R. Lawless from 13th July to 11th December 1957 under section 4 of the Offences against the State (Amendment) Act, 1940, complied with the stipulations of the Convention;

3. Whereas, in this connection the Irish Government has put in against the Application of G.R. Lawless a plea in bar as to the merits derived from Article 17 (art. 17) of the Convention; whereas this plea in bar should be examined first;

As to the plea in bar derived from Article 17 (art. 17) of the Convention.

4. Whereas Article 17 (art. 17) of the Convention provides as follows:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention".

5. Whereas the Irish Government submitted to the Commission and reaffirmed before the Court (i) that G.R. Lawless, at the time of his arrest in July 1957, was engaged in IRA activities; (ii) that the Commission, in paragraph 138 of its Report, had already observed that his conduct was "such as to draw upon the Applicant the gravest suspicion that, whether or not he was any longer a member, he was still concerned with the activities of the IRA at the time of his arrest in July 1957"; (iii) that the IRA was banned on account of its activity aimed at the destruction of the rights and freedoms set forth in the Convention; that, in July 1957, G.R. Lawless was thus concerned in activities falling within the terms of Article 17 (art. 17) of the Convention; that he therefore no longer had a right to rely on Articles 5, 6, 7 (art. 5, art. 6, art. 7) or any other Article of the Convention; that no State, group or person engaged in activities falling within the terms of Article 17 (art. 17) of the Convention may rely on any of the provisions of the Convention; that this construction was supported by the Commission's decision on the admissibility of the Application submitted to it in 1957 by the German Communist Party; that, however, where Article 17 (art. 17) is applied, a Government is not released from its obligation towards other Contracting Parties to ensure that its conduct continues to comply with the provisions of the Convention;

6. Whereas the Commission, in the Report and in the course of the written pleadings and oral hearings before the Court, expressed the view that Article 17 (art. 17) is not applicable in the present case; whereas the submissions of the Commission on this point may be summarised as follows: that the general purpose of Article 17 (art. 17) is to prevent totalitarian groups from exploiting in their own interest the principles enunciated by the Convention; but that to achieve that purpose it is not necessary to take away every one of the rights and freedoms guaranteed in the Convention from persons found to be engaged in activities aimed at the destruction of any of those rights and freedoms; that Article 17 (art. 17) covers essentially those rights which, if invoked, would facilitate the attempt to derive therefrom a right to engage personally in activities aimed at the destruction of "any of the rights and freedoms set forth in the Convention"; that the decision on the admissibility of the Application submitted by the German Communist Party (Application No. 250/57)

was perfectly consistent with this construction of Article 17 (art. 17); that there could be no question, in connection with that Application, of the rights set forth in Articles 9, 10 and 11 (art. 9, art. 10, art. 11) of the Convention, since those rights, if extended to the Communist Party, would have enabled it to engage in the very activities referred to in Article 17 (art. 17);

Whereas, in the present case, the Commission was of the opinion that, even if G. R. Lawless was personally engaged in IRA activities at the time of his arrest, Article 17 (art. 17) did not preclude him from claiming the protection of Articles 5 and 6 (art. 5, art. 6) of the Convention nor absolve the Irish Government from observing the provisions of those Articles, which protect every person against arbitrary arrest and detention without trial;

7. Whereas in the opinion of the Court the purpose of Article 17 (art. 17), insofar as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention; whereas, therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms; whereas this provision which is negative in scope cannot be construed a contrario as depriving a physical person of the fundamental individual rights guaranteed by Articles 5 and 6 (art. 5, art. 6) of the Convention; whereas, in the present instance G.R. Lawless has not relied on the Convention in order to justify or perform acts contrary to the rights and freedoms recognised therein but has complained of having been deprived of the guarantees granted in Articles 5 and 6 (art. 5, art. 6) of the Convention; whereas, accordingly, the Court cannot, on this ground, accept the submissions of the Irish Government.

As to whether the detention of G.R. Lawless without trial from 13th July to 11th December 1957 under Section 4 of the Offences against the State (Amendment) Act 1940, conflicted with the Irish Government's obligations under Articles 5 and 6 (art. 5, art. 6) of the Convention.

8. Whereas Article 5 (art. 5) of the Convention reads 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:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision of his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(3) Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial power

and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article (art. 5) shall have an enforceable right to compensation."

9. Whereas the Commission, in its Report, expressed the opinion that the detention of G.R. Lawless did not fall within any of the categories of cases listed in Article 5, paragraph 1 (art. 5-1) of the Convention and hence was not a measure deprivative of liberty which was authorised by the said clause; whereas it is stated in that opinion that under Article 5, paragraph 1 (art. 5-1), deprivation of liberty is authorised in six separate categories of cases of which only those referred to in sub-paragraphs (b) (art. 5-1-b) in fine ("in order to secure the fulfilment of any obligation prescribed by law") and (c) (art. 5-1-c) of the said paragraph come into consideration in the present instance, the Irish Government having invoked each of those sub-paragraphs before the Commission as justifying the detention of G.R. Lawless; that, with regard to Article 5, paragraph 1 (b) (art. 5-1-b) in fine, the detention of Lawless by order of a Minister of State on suspicion of being engaged in activities prejudicial to the preservation of public peace and order or to the security of the State cannot be deemed to be a measure taken "in order to secure the fulfilment of any obligation prescribed by law", since that clause does not contemplate arrest or detention for the prevention of offences against public peace and public order or against the security of the State but for securing the execution of specific obligations imposed by law;

That, moreover, according to the Commission, the detention of G. R. Lawless is not covered by Article 5, paragraph 1 (c) (art. 5-1-c), since he was not brought before the competent judicial authority during the period under review; that paragraph 1 (c) (art. 5-1-c) authorises the arrest or detention of a person on suspicion of being engaged in criminal activities only when it is effected for the purpose of bringing him before the competent judicial authority; that the Commission has particularly pointed out in this connexion that both the English and French versions of the said clause make it clear that the words "effected for the purpose of bringing him before the competent judicial authority" apply not only to the case of a person arrested or detained on "reasonable suspicion of having committed an offence" but also to the case of a person arrested or detained "when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so"; that, furthermore, the presence of a comma in the French version after the words "s'il a été arrêté et détenu en vue d'être conduit devant l'autorité judiciaire compétente" means that this passage qualifies all the categories of arrest and detention mentioned after the comma; that in addition, paragraph 1 (c) of Article 5 (art. 5-1-c) has to be read in conjunction with paragraph 3 of the same Article (art. 5-3) whereby everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of the said Article (art. 5-1-c) shall be brought promptly before a judge; that it is hereby confirmed that Article 5, paragraph 1 (c) (art. 5-1-c), allows the arrest or detention of a person effected solely for the purpose of bringing him before a judge;

Whereas the Commission has expressed no opinion on whether or not the detention of G.R. Lawless was consistent with the provisions of Article 6 (art. 6) of the Convention;

10. Whereas the Irish Government have contended before the Court:

- that the detention from 13th July to 11th December 1957 of G.R. Lawless - whose general conduct together with a number of specific circumstances drew upon him, in the opinion of the Commission itself (paragraph 138 of its Report), "the gravest suspicion that he was concerned with the activities of the IRA" at the time of his arrest in July 1957 - was not a violation of Article 5 or 6 (art. 5, art. 6) of the Convention; whereas the Irish Government have contended that the Convention does not require that a person arrested or detained on preventive grounds shall be brought before a judicial authority; and that, consequently, the detention of G.R. Lawless did not conflict with the stipulations of the Convention; whereas on this point the Irish Government,



not relying before the Court, as they had done before the Commission, on paragraph 1 (b) of Article 5 (art. 5-1-b), have made submissions which include the following: that Article 5 paragraph 1 (c) (art. 5-1-c) refers to two entirely separate categories of cases of deprivation of liberty - those where a person is arrested or detained "on reasonable suspicion of having committed an offence" and those where a person is arrested or detained "when it is reasonably considered necessary to prevent his committing an offence, etc."; that it is clear from the wording of the said clause that the obligation to bring the arrested or detained person before the competent judicial authority applies only to the former category of case; that this is the meaning of the clause, particularly in the English version;

- that the preliminary work on Article 5 (art. 5) supports this construction of the said clause; that account must be taken of the fact that the said Article (art. 5) is derived from a proposal submitted to the Committee of Experts by the United Kingdom delegation in March 1950 and that the French version is consequently only a translation of the original English text; that, as regards paragraph 1 (c) on the Article (art. 5-1-c), the words "or when it is reasonably considered necessary" appeared in the first draft as "or which is reasonably considered to be necessary" and, in the English version, clearly refer to the words "arrest or detention" and not to the phrase "effected for the purpose of bringing him before the competent legal authority"; that this clause subsequently underwent only drafting alterations;

- that Article 5, paragraph 3 (art. 5-3) does not conflict with this construction of paragraph 1 (c) of the same Article (art. 5-1-c); that paragraph 3 (art. 5-3) applies only to the first category of cases mentioned in paragraph 1 (c) (art. 5-1-c) and not to cases of the arrest or detention of a person "when it is reasonably considered necessary to prevent his committing an offence"; that this interpretation is supported by the fact that in Common Law countries a person cannot be put on trial for having intended to commit an offence;

- that Article 5, paragraph 3 (art. 5-3), is also derived from a proposal submitted in March 1950 by the United Kingdom delegation to the "Committee of Experts" convened to prepare the first draft of a Convention; that the British proposal was embodied in the draft produced by the Committee of Experts; that this draft was then examined by a "Conference of Senior Officials" who deleted from paragraph 3 (art. 5-3) the words "or to prevent his committing a crime"; that paragraph 3 (art. 5-3), after amendment by the Senior Officials, accordingly read as follows:

"Anyone arrested or detained on the charge of having committed a crime, in accordance with the provisions of paragraph 1 (c) (art. 5-1-c), shall be brought promptly before a judge or other officer authorised by law.";

- that it follows from the foregoing that the Senior Officials intended to exclude from Article 5, paragraph 3 (art. 5-3), the case of a person arrested to prevent his committing a crime; that this intention on the part of the Senior Officials is further confirmed by the following passage in their Report to the Committee of Ministers (Doc. CM/WP 4 (50) 19, p. 14):

"The Conference considered it useful to point out that where authorised arrest or detention is effected on reasonable suspicion of preventing the commission of a crime, it should not lead to the introduction of a regime of a Police State. It may, however, be necessary in certain circumstances to arrest an individual in order to prevent his committing a crime, even if the facts which show his intention to commit the crime do not of themselves constitute a penal offence. In order to avoid any possible abuses of the right thus conferred on public authorities, Article 13, para. 2 (art. 13-2), will have to be applied strictly.";

- that it is clear from the report of the Senior Officials that they - being aware of the danger of abuse in applying a clause which, as in the case of Article 5, paragraph 1 (c) (art. 5-1-c), allows the arrest or detention of a person when it is reasonably considered necessary to prevent his committing an offence - wished to obviate that danger not by means of a judicial decision but through the strict enforcement of the rule in Article 13, paragraph 2, of the draft, which later became Article 18 (art. 18) of Convention; and that Article 5 (art. 5) subsequently underwent only drafting alterations which, however, did not make the meaning of the text absolutely clear or render it proof against misinterpretation;

- whereas the Irish Government have contended that Article 6 (art. 6) of the Convention is irrelevant to the

present case, since there was no criminal charge against Lawless;

11. Whereas the Commission in its Report and its Principal Delegate at the oral hearing rebutted the construction placed by the Irish Government on Article 5 (art. 5) and based in part on the preparatory work; whereas the Commission contends in the first place that, in accordance with a well-established rule concerning the interpretation of international treaties, it is not permissible to resort to preparatory work when the meaning of the clauses to be construed is clear and unequivocal; and that even reference to the preparatory work can reveal no ground for questioning the Commission's interpretation of Article 5 (art. 5); whereas, in support of its interpretation it has put forward submissions which may be summarised as follows: that it is true that, in the Council of Europe, Article 5 (art. 5) is derived from a proposal made to the Committee of Experts by the United Kingdom delegation in March 1950, but that that proposal was based on a text introduced in the United Nations by a group of States which included not only the United Kingdom but also France; that the United Nations text was prepared in a number of languages, including English and French; that the British delegation, when introducing their proposal in the Committee of Experts of the Council of Europe, put in both the French and the English versions of the text in question; that the English version cannot therefore be regarded as the dominant text; that on the contrary, all the evidence goes to show that the changes made in the English version, particularly in that of Article 5, paragraph 1 (c) (art. 5-1-c), during the preparatory work at the Council of Europe were intended to bring it into line with the French text, which, apart from a few drafting alterations of no importance to the present case, was essentially the same as that finally adopted for Article 5 (art. 5) of the Convention; that this is true even of the comma after the words "autorité judiciaire compétente", which strictly bears out the construction placed by the Commission on Article 5, paragraph 1 (c) (art. 5-1-c); that the preparatory work on Article 5, paragraph 3 (art. 5-3), leaves no room for doubt about the intention of the authors of the Convention to require that everyone arrested or detained in one or other of the circumstances mentioned in paragraph 1 (c) of the same Article (art. 5-1-c) should be brought promptly before a judge; that this text, too, had its origin in the United Nations draft Covenant in both languages; that the words "on the charge of having committed a crime" were in fact deleted on 7th August 1950 by the Committee of Ministers themselves, but only in order to bring the English text into line with the French, which had already been given the following wording by the Conference of Senior Officials: "Toute personne arrêtée ou détenue, dans les conditions prévues au paragraphe 1 (c) (art. 5-1-c) etc. ..."; and that the submissions of the Irish Government therefore receive no support from the preparatory work;

12. Whereas in the first place, the Court must point out that the rules set forth in Article 5, paragraph 1 (b), and Article 6 (art. 5-1-b, art. 6) respectively are irrelevant to the present proceedings, the former because G.R. Lawless was not detained "for non-compliance with the ... order of a court" and the latter because there was no criminal charge against him; whereas, on this point, the Court is required to consider whether or not the detention of G.R. Lawless from 13th July to 11th December 1957 under the 1940 Amendment Act conflicted with the provisions of Article 5, paragraphs 1 (c) and 3 (art. 5-1-c, art. 5-3);

13. Whereas, in this connection, the question referred to the judgment of the Court is whether or not the provisions of Article 5, paragraphs 1 (c) and 3 (art. 5-1-c, art. 5-3), prescribe that a person arrested or detained "when it is reasonably considered necessary to prevent his committing an offence" shall be brought before a judge, in other words whether, in Article 5, paragraph 1 (c) (art. 5-1-c), the expression "effected for the purpose of bringing him before the competent judicial authority" qualifies only the words "on reasonable suspicion of having committed an offence" or also the words "when it is reasonably considered necessary to prevent his committing an offence";

14. Whereas the wording of Article 5, paragraph 1 (c) (art. 5-1-c), is sufficiently clear to give an answer to this question; whereas it is evident that the expression "effected for purpose of bringing him before the competent legal authority" qualifies every category of cases of arrest or detention referred to in that subparagraph (art. 5-1-c); whereas it follows that the said clause permits deprivation of liberty only when such deprivation is effected for the purpose of bringing the person arrested or detained before the competent judicial authority, irrespective of whether such person is a person who is reasonably suspected of having committed an offence, or a person whom it is reasonably considered necessary to restrain from committing an offence, or a person whom it reasonably considered necessary to restrain from absconding after having

committed an offence;

Whereas, further, paragraph 1 (c) of Article 5 (art. 5-1-c) can be construed only if read in conjunction with paragraph 3 of the same Article (art. 5-3), with which it forms a whole; whereas paragraph 3 (art. 5-3) stipulates categorically that "everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c) shall be brought promptly before a judge ..." and "shall be entitled to trial within a reasonable time"; whereas it plainly entails the obligation to bring everyone arrested or detained in any of the circumstances contemplated by the provisions of paragraph 1 (c) (art. 5-1-c) before a judge for the purpose of examining the question of deprivation of liberty or for the purpose of deciding on the merits; whereas such is the plain and natural meaning of the wording of both paragraph 1 (c) and paragraph 3 of Article 5 (art. 5-1-c, art. 5-3);

Whereas the meaning thus arrived at by grammatical analysis is fully in harmony with the purpose of the Convention which is to protect the freedom and security of the individual against arbitrary detention or arrest; whereas it must be pointed out in this connexion that, if the construction placed by the Court on the aforementioned provisions were not correct, anyone suspected of harbouring an intent to commit an offence could be arrested and detained for an unlimited period on the strength merely of an executive decision without its being possible to regard his arrest or detention as a breach of the Convention; whereas such an assumption, with all its implications of arbitrary power, would lead to conclusions repugnant to the fundamental principles of the Convention; whereas therefore, the Court cannot deny Article 5, paragraphs 1 (c) and 3 (art. 5-1-c, art. 5-3), the plain and natural meaning which follows both from the precise words used and from the impression created by their context; whereas, therefore, there is no reason to concur with the Irish Government in their analysis of paragraph 3 (art. 5-3) seeking to show that that clause is applicable only to the first category of cases referred to in Article 5, paragraph 1 (c) (art. 5-1-c), to the exclusion of cases of arrest or detention of a person "when it is reasonably considered necessary to prevent his committing an offence";

Whereas, having ascertained that the text of Article 5, paragraphs 1 (c) and 3, (art. 5-1-c, art. 5-3) is sufficiently clear in itself and means, on the one hand, that every person whom "it is reasonably considered necessary to prevent ... committing an offence" may be arrested or detained only "for the purpose of bringing him before the competent legal authority" and, on the other hand, that once a person is arrested or detained he shall be brought before a judge and "shall be entitled to trial within a reasonable time", and that, having also found that the meaning of this text is in keeping with the purpose of the Convention, the Court cannot, having regard to a generally recognised principle regarding the interpretation of international treaties, resort to the preparatory work;

15. Whereas it has been shown that the detention of G.R. Lawless from 13th July to 11th December 1957 was not "effected for the purpose of bringing him before the competent legal authority" and that during his detention he was not in fact brought before a judge for trial "within a reasonable time"; whereas it follows that his detention under Section 4 of the Irish 1940 Act was contrary to the provisions of Article 5, paras. 1 (c) and 3 (art. 5-1-c, art. 5-3) of the Convention; whereas it will therefore be necessary to examine whether, in the particular circumstances of the case, the detention was justified on other legal grounds;

As to whether the detention of G.R. Lawless from 13th July to 11th December 1957 under Section 4 of the Offences against the State (Amendment) Act, 1940, conflicted with the Irish Government's obligations under Article 7 (art. 7) of the Convention.

16. Whereas the Commission referred before the Court to the renewed allegation of G.R. Lawless that his detention constituted a violation of Article 7 (art. 7) of the Convention; whereas the said Article (art. 7) reads as follows:

"(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article (art. 7) shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

Whereas the submissions made by G.R. Lawless before the Commission were substantially as follows: that the 1940 Act was brought into force on 8th July 1957 and that he was arrested on 11th July 1957; that it was evident from the proceedings before the Detention Commission - which had to examine cases of detention effected under the 1940 Act - that the Minister of State, in signing the warrant of detention, had taken into consideration matters alleged to have occurred before 8th July 1957; that, if the substance rather than the form of the 1940 Act were considered, detention under that Act would constitute a penalty for having committed an offence; that the offences to which the 1940 Act relates were not punishable before 8th July 1957, when the Act came into force; that, furthermore, if he had been convicted of the alleged offences by an ordinary court, he would in all probability have been sentenced to less severe penalties which would have been subject to review on appeal in due course of law;

17. Whereas the Commission, in its Report, expressed the opinion that Article 7 (art. 7) was not applicable in the present case; that in particular, G.R. Lawless was not detained as a result of a conviction on a criminal charge and that his detention was not a "heavier penalty" within the meaning of Article 7 (art. 7); that, moreover, there was no question of section 4 of the 1940 Act being applied retroactively, since a person was liable to be detained under that clause only if a Minister of State was of the opinion that that person was, after the power of detention conferred by section 4 had come into force, engaged in activities prejudicial to the preservation of public peace and order or the security of the State;

18. Whereas the Irish Government share the Commission's opinion on this point;

19. Whereas the proceedings show that the Irish Government detained G.R. Lawless under the Offences against the State (Amendment) Act, 1940, for the sole purpose of restraining him from engaging in activities prejudicial to the preservation of public peace and order or the security of the State; whereas his detention, being a preventive measure, cannot be deemed to be due to his having been held guilty of a criminal offence within the meaning of Article 7 (art. 7) of the Convention; whereas it follows that Article 7 (art. 7) has no bearing on the case of G.R. Lawless; whereas, therefore, the Irish Government in detaining G.R. Lawless under the 1940 Act, did not violate their obligation under Article 7 (art. 7) of the Convention.

As to whether, despite Articles 5 and 6 (art. 5, art. 6) of the Convention, the detention of G.R. Lawless was justified by the right of derogation allowed to the High Contracting Parties in certain exceptional circumstances under Article 15 (art. 15) of the Convention.

20. Whereas the Court is called upon to decide whether the detention of G.R. Lawless from 13th July to 11th December 1957 under the Offences against the State (Amendment) Act, 1940, was justified, despite Articles 5 and 6 (art. 5, art. 6) of the Convention, by the right of derogation allowed to the High Contracting Parties in certain exceptional circumstances under Article 15 (art. 15) of the Convention;

21. Whereas Article 15 (art. 15) reads as follows:

"(1) In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

(2) No derogation from Article 2 (art. 2), except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 (art. 3, art. 4-1, art. 7) shall be made under this provision.

(3) Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall

also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.";

22. Whereas it follows from these provisions that, without being released from all its undertakings assumed in the Convention, the Government of any High Contracting Party has the right, in case of war or public emergency threatening the life of the nation, to take measures derogating from its obligations under the Convention other than those named in Article 15, paragraph 2 (art. 15-2), provided that such measures are strictly limited to what is required by the exigencies of the situation and also that they do not conflict with other obligations under international law; whereas it is for the Court to determine whether the conditions laid down in Article 15 (art. 15) for the exercise of the exceptional right of derogation have been fulfilled in the present case;

(a) As to the existence of a public emergency threatening the life of the nation.

23. Whereas the Irish Government, by a Proclamation dated 5th July 1957 and published in the Official Gazette on 8th July 1957, brought into force the extraordinary powers conferred upon it by Part II of the Offences against the State (Amendment) Act, 1940, "to secure the preservation of public peace and order";

24. Whereas, by letter dated 20th July 1957 addressed to the Secretary-General of the Council of Europe, the Irish Government expressly stated that "the detention of persons under the Act is considered necessary to prevent the commission of offences against public peace and order and to prevent the maintaining of military or armed forces other than those authorised by the Constitution";

25. Whereas, in reply to the Application introduced by G.R. Lawless before the Commission, the Irish Government adduced a series of facts from which they inferred the existence, during the period mentioned, of "a public emergency threatening the life of the nation" within the meaning of Article 15 (art. 15);

26. Whereas, before the Commission, G.R. Lawless submitted in support of his application that the aforesaid facts, even if proved to exist, would not have constituted a "public emergency threatening the life of the nation" within the meaning of Article 15 (art. 15); whereas, moreover, he disputed some of the facts adduced by the Irish Government;

27. Whereas the Commission, following the investigation carried out by it in accordance with Article 28 (art. 28) of the Convention, expressed a majority opinion in its Report that in "July 1957 there existed in Ireland a public emergency threatening the life of the nation within the meaning of Article 15, paragraph 1 (art. 15-1), of the Convention";

28. Whereas, in the general context of Article 15 (art. 15) of the Convention, the natural and customary meaning of the words "other public emergency threatening the life of the nation" is sufficiently clear; whereas they refer to an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed; whereas, having thus established the natural and customary meaning of this conception, the Court must determine whether the facts and circumstances which led the Irish Government to make their Proclamation of 5th July 1957 come within this conception; whereas the Court, after an examination, find this to be the case; whereas the existence at the time of a "public emergency threatening the life of the nation", was reasonably deduced by the Irish Government from a combination of several factors, namely: in the first place, the existence in the territory of the Republic of Ireland of a secret army engaged in unconstitutional activities and using violence to attain its purposes; secondly, the fact that this army was also operating outside the territory of the State, thus seriously jeopardising the relations of the Republic of Ireland with its neighbour; thirdly, the steady and alarming increase in terrorist activities from the autumn of 1956 and throughout the first half of 1957;

29. Whereas, despite the gravity of the situation, the Government had succeeded, by using means available under ordinary legislation, in keeping public institutions functioning more or less normally, but whereas the homicidal ambush on the night 3rd to 4th July 1957 in the territory of Northern Ireland near the border had brought to light, just before 12th July - a date, which, for historical reasons is particularly critical for the

preservation of public peace and order - the imminent danger to the nation caused by the continuance of unlawful activities in Northern Ireland by the IRA and various associated groups, operating from the territory of the Republic of Ireland;

30. Whereas, in conclusion, the Irish Government were justified in declaring that there was a public emergency in the Republic of Ireland threatening the life of the nation and were hence entitled, applying the provisions of Article 15, paragraph 1 (art. 15-1), of Convention for the purposes for which those provisions were made, to take measures derogating from their obligations under the Convention;

(b) As to whether the measures taken in derogation from obligations under the Convention were "strictly required by the exigencies of the situation".

31. Whereas Article 15, paragraph 1 (art. 15-1), provides that a High Contracting Party may derogate from its obligations under the Convention only "to the extent strictly required by the exigencies of the situation"; whereas it is therefore necessary, in the present case, to examine whether the bringing into force of Part II of the 1940 Act was a measure strictly required by the emergency existing in 1957;

32. Whereas G.R. Lawless contended before the Commission that even if the situation in 1957 was such as to justify derogation from obligations under the Convention, the bringing into operation and the enforcement of Part II of the Offences against the State (Amendment) Act 1940 were disproportionate to the strict requirements of the situation;

33. Whereas the Irish Government, before both the Commission and the Court, contended that the measures taken under Part II of the 1940 Act were, in the circumstances, strictly required by the exigencies of the situation in accordance with Article 15, paragraph 1 (art. 15-1), of the Convention;

34. Whereas while the majority of the Commission concurred with the Irish Government's submissions on this point, some members of the Commission drew from the facts established different legal conclusions;

35. Whereas it was submitted that in view of the means available to the Irish Government in 1957 for controlling the activities of the IRA and its splinter groups the Irish Government could have taken measures which would have rendered superfluous so grave a measure as detention without trial; whereas, in this connection, mention was made of the application of the ordinary criminal law, the institution of special criminal courts of the type provided for by the Offences against the State Act, 1939, or of military courts; whereas it would have been possible to consider other measures such as the sealing of the border between the Republic of Ireland and Northern Ireland;

36. Whereas, however, considering, in the judgment of the Court, that in 1957 the application of the ordinary law had proved unable to check the growing danger which threatened the Republic of Ireland; whereas the ordinary criminal courts, or even the special criminal courts or military courts, could not suffice to restore peace and order; whereas, in particular, the amassing of the necessary evidence to convict persons involved in activities of the IRA and its splinter groups was meeting with great difficulties caused by the military, secret and terrorist character of those groups and the fear they created among the population; whereas the fact that these groups operated mainly in Northern Ireland, their activities in the Republic of Ireland being virtually limited to the preparation of armed raids across the border was an additional impediment to the gathering of sufficient evidence; whereas the sealing of the border would have had extremely serious repercussions on the population as a whole, beyond the extent required by the exigencies of the emergency;

Whereas it follows from the foregoing that none of the above-mentioned means would have made it possible to deal with the situation existing in Ireland in 1957; whereas, therefore, the administrative detention - as instituted under the Act (Amendment) of 1940 - of individuals suspected of intending to take part in terrorist activities, appeared, despite its gravity, to be a measure required by the circumstances;

37. Whereas, moreover, the Offences against the State (Amendment) Act of 1940, was subject to a number of safeguards designed to prevent abuses in the operation of the system of administrative detention; whereas

the application of the Act was thus subject to constant supervision by Parliament, which not only received precise details of its enforcement at regular intervals but could also at any time, by a Resolution, annul the Government's Proclamation which had brought the Act into force; whereas the Offences against the State (Amendment) Act 1940, provided for the establishment of a "Detention Commission" made up of three members, which the Government did in fact set up, the members being an officer of the Defence Forces and two judges; whereas any person detained under this Act could refer his case to that Commission whose opinion, if favourable to the release of the person concerned, was binding upon the Government; whereas, moreover, the ordinary courts could themselves compel the Detention Commission to carry out its functions;

Whereas, in conclusion, immediately after the Proclamation which brought the power of detention into force, the Government publicly announced that it would release any person detained who gave an undertaking to respect the Constitution and the Law and not to engage in any illegal activity, and that the wording of this undertaking was later altered to one which merely required that the person detained would undertake to observe the law and refrain from activities contrary to the 1940 Act; whereas the persons arrested were informed immediately after their arrest that they would be released following the undertaking in question; whereas in a democratic country such as Ireland the existence of this guarantee of release given publicly by the Government constituted a legal obligation on the Government to release all persons who gave the undertaking;

Whereas, therefore, it follows from the foregoing that the detention without trial provided for by the 1940 Act, subject to the above-mentioned safeguards, appears to be a measure strictly required by the exigencies of the situation within the meaning of Article 15 (art. 15) of the Convention;

38. Whereas, in the particular case of G.R. Lawless, there is nothing to show that the powers of detention conferred upon the Irish Government by the Offences against the State (Amendment) Act 1940, were employed against him, either within the meaning of Article 18 (art. 18) of the Convention, for a purpose other than that for which they were granted, or within the meaning of Article 15 (art. 15) of the Convention, by virtue of a measure going beyond what was strictly required by the situation at that time; whereas on the contrary, the Commission, after finding in its Decision of 30th August 1958 on the admissibility of the Application that the Applicant had in fact submitted his Application to it after having exhausted the domestic remedies, observed in its Report that the general conduct of G.R. Lawless, "his association with persons known to be active members of the IRA, his conviction for carrying incriminating documents and other circumstances were such as to draw upon the Applicant the gravest suspicion that, whether or not he was any longer a member, he still was concerned with the activities of the IRA at the time of his arrest in July 1957; whereas the file also shows that, at the beginning of G.R. Lawless's detention under Act No. 2 of 1940, the Irish Government informed him that he would be released if he gave a written undertaking "to respect the Constitution of Ireland and the Laws" and not to "be a member of or assist any organisation that is an unlawful organisation under the Offences against the State Act, 1939"; whereas in December 1957 the Government renewed its offer in a different form, which was accepted by G.R. Lawless, who gave a verbal undertaking before the Detention Commission not to "take part in any activities that are illegal under the Offences against the State Acts 1939 and 1940" and was accordingly immediately released;

(c) As to whether the measures derogating from obligations under the Convention were "inconsistent with ... other obligations under international law".

39. Whereas Article 15, paragraph 1 (art. 15-1), of the Convention authorises a High Contracting Party to take measures derogating from the Convention only provided that they "are not inconsistent with ... other obligations under international law";

40. Whereas, although neither the Commission nor the Irish Government have referred to this provision in the proceedings, the function of the Court, which is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention (Article 19 of the Convention) (art. 19), requires it to determine proprio motu whether this condition has been fulfilled in the present case;

41. Whereas no facts have come to the knowledge of the Court which give it cause hold that the measure

taken by the Irish Government derogating from the Convention may have conflicted with the said Government's other obligations under international law;

As to whether the letter of 20th July 1957 from the Irish Government to the Secretary-General of the Council of Europe was a sufficient notification for the purposes of Article 15, paragraph 3 (art. 15-3), of the Convention.

42. Whereas Article 15, paragraph 3 (art. 15-3), of the Convention provides that a Contracting Party availing itself of the right of derogation under paragraph 1 of the same Article (art. 15-1) shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor and shall also inform him when such measures have ceased to operate;

43. Whereas, in the present case, the Irish Government, on 20th July 1957, sent the Secretary-General of the Council of Europe a letter informing him - as is stated therein: "in compliance with Article 15 (3) (art. 15-3) of the Convention" - that Part II of the Offences against the State (Amendment) Act, 1940, had been brought into force on 8th July 1957; whereas copies of the Irish Government's Proclamation on the subject and of the 1940 Act itself were attached to the said letter; whereas the Irish Government explained in the said letter that the measure in question was "considered necessary to prevent the commission of offences against public peace and order and to prevent the maintaining of military or armed forces other than those authorised by the Constitution";

44. Whereas G.R. Lawless contested before the Commission the Irish Government's right to rely on the letter of 20th July 1957 as a valid notice of derogation un Article 15, paragraph 3 (art. 15-3), of the Convention; whereas, in substance, he contended before the Commission: that the letter had not the character of a notice of derogation, as the Government had not sent it for the purpose of registering a formal notice of derogation; that even if the letter were to be regarded as constituting such a notice, it did not comply with the strict requirements of Article 15, paragraph 3 (art. 15-3), in that it neither adduced, as a ground for detention without trial, the existence of a time of war or other public emergency threatening the life of the nation nor properly defined the nature of the measure taken by the Government; whereas the Principal Delegate of the Commission, in the proceedings before the Court, made known a third contention of G.R. Lawless to the effect that the derogation, even if it had been duly notified to the Secretary-General on 20th July 1957, could not be enforced against persons within the jurisdiction of the Republic of Ireland in respect of the period before 23rd October 1957, when it was first made public in Ireland;

45. Whereas the Commission expressed the opinion that the Irish Government had not delayed in bringing the enforcement of the special measures to the attention of the Secretary-General with explicit reference to Article 15, paragraph 3 (art. 15-3), of the Convention; whereas the terms of the letter of 20th July 1957, to which were attached copies of the 1940 Act and of the Proclamation bringing it into force, were sufficient to indicate to the Secretary-General the nature of the measures taken and that consequently, while noting that the letter of 20th July did not contain a detailed account of the reasons which had led the Irish Government to take the measures of derogation, it could not say that in the present case there had not been a sufficient compliance with the provisions of Article 15, paragraph 3 (art. 15-3); whereas, with regard to G.R. Lawless' third contention the Delegates of the Commission added, in the proceedings before the Court, that Article 15, paragraph 3 (art. 15-3), of the Convention required only that the Secretary-General of the Council of Europe be informed of the measures of derogation taken, without obliging the State concerned to promulgate the notice of derogation within the framework of its municipal laws;

46. Whereas the Irish Government, in their final submissions, asked the Court to state, in accordance with the Commission's opinion, that the letter of 20th July 1957 constituted a sufficient notification for the purposes of Article 15, paragraph 3 (art. 15-3), of the Convention or, alternatively, to declare that there is nothing in the said paragraph 3 (art. 15-3) which, in the present case, detracts from the Irish Government's right to rely on paragraph 1 of the said Article 15 (art. 15-1);

47. Whereas the Court is called upon in the first instance, to examine whether, in pursuance of paragraph 3 of Article 15 (art. 15-3) of the Convention, the Secretary-General of the Council of Europe was duly



informed both of the measures taken and of the reason therefor; whereas the Court notes that a copy of the Offences against the State (Amendment) Act, 1940, and a copy of the Proclamation of 5th July, published on 8th July 1957, bringing into force Part II of the aforesaid Act were attached to the letter of 20th July; that it was explained in the letter of 20th July that the measures had been taken in order "to prevent the commission of offences against public peace and order and to prevent the maintaining of military or armed forces other than those authorised by the Constitution"; that the Irish Government thereby gave the Secretary-General sufficient information of the measures taken and the reasons therefor; that, in the second place, the Irish Government brought this information to the Secretary-General's attention only twelve days after the entry into force of the measures derogating from their obligations under the Convention; and that the notification was therefore made without delay; whereas, in conclusion, the Convention does not contain any special provision to the effect that the Contracting State concerned must promulgate in its territory the notice of derogation addressed to the Secretary-General of the Council of Europe;

Whereas the Court accordingly finds that, in the present case, the Irish Government fulfilled their obligations as Party to the Convention under Article 15, paragraph 3 (art. 15-3), of the Convention;

48. For these reasons,

THE COURT

Unanimously,

- (i) Dismisses the plea in bar derived by the Irish Government from Article 17 (art. 17) of the Convention;
- (ii) States that Articles 5 and 6 (art. 5, art. 6) of the Convention provided no legal foundation for the detention without trial of G.R. Lawless from 13th July to 11th December 1957, by virtue of Article 4 of the Offences against the State (Amendment) Act, 1940;
- (iii) States that there was no breach of Article 7 (art. 7) of the Convention;
- (iv) States that the detention of G.R. Lawless from 13th July to 11th December 1957 was founded on the right of derogation duly exercised by the Irish Government in pursuance of Article 15 (art. 15) of the Convention in July 1957;
- (v) States that the communication addressed by the Irish Government to the Secretary-General of the Council of Europe on 20th July 1957 constituted sufficient notification within the meaning of Article 15, paragraph 3 (art. 15-3), of the Convention;

Decides, accordingly, that in the present case the facts found do not disclose a breach by the Irish Government of their obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms;

Decides, therefore, that the question of entitlement by G.R. Lawless to compensation in respect of such a breach does not arise.

Done in French and in English, the French text being authentic, at the Council of Europe, Strasbourg, this first day of July one thousand nine hundred and sixty-one.

Signed: R. CASSIN  
President

Signed: P. MODINOS  
Registrar

Mr. G. MARIDAKIS, Judge, while concurring with the operative part of the judgment, annexed thereto an

individual opinion, in accordance with Rule 50, paragraph 2 of the Rules of Court.

Initialled: R. C.

Initialled: P. M.

### **Individual Opinion of Mr. G. Maridakis**

The Irish Government have not violated the provisions of Article 15 (art. 15) of the Convention.

When the State is engaged in a life and death struggle, no one can demand that it refrain from taking special emergency measures: *salus rei publicae suprema lex est*. Article 15 (art. 15) is founded on that principle.

Postulating this right of defence, the Convention provides in this Article (art. 15) that "in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention", provided, however, that it does so only "to the extent strictly required by the exigencies of the situation" and "provided that such measures are not inconsistent with its other obligations under international law."

By "public emergency threatening the life of the nation" it is to be understood a quite exceptional situation which imperils or might imperil the normal operation of public policy established in accordance with the lawfully expressed will of the citizens, in respect alike of the situation inside the country and of relations with foreign Powers.

The Irish Government having determined that in July 1957 the activities of the IRA had assumed the character of a public emergency threatening the life of the nation, in order to meet this emergency, put into effect on 8th July 1957 the 1940 Act amending the Offences against the State Act, 1939.

In compliance with Article 15 (3) (art. 15-3), the Irish Government notified the Secretary-General of the Council of Europe of their intention to bring the 1940 Act legally into force by letter of 20th July 1957, in which it wrote:

"I have the honour also to invite your attention to section 8 of the Act, which provides for the establishment by the Government of Ireland of a Commission to inquire into the grounds of detention of any person who applies to have his detention investigated. The Commission envisaged by the section was established on the 16th July 1957."

The 1940 Act involves derogation from obligations under Article 5 (1) (c) and (3) (art. 5-1-c, art. 5-3) of the Convention, since, in contrast to that Article (art. 5), which imposes the obligation to bring the person concerned before a judge, the 1940 Act gives such person the right to request that the Commission established under the Act inquire into the ground of his detention.

Nevertheless, the derogation does not go beyond the "extent strictly required by the exigencies of the situation." The Government had always been engaged in a struggle with the IRA. If, then, to prevent actions by the IRA calculated to aggravate the public emergency threatening the life of the nation the Government brought in a law authorising the arrest of any person whom they had good reason to suspect of connections with that secret and unlawful organisation, they were acting within the limits imposed on the State by Article 15 (art. 15) of the Convention. The Act, moreover, does not leave an arrested person without safeguards. A special Commission inquires into the grounds for the arrest of such person, who is thus protected against arbitrary arrest.

It follows that the Offences against the State (Amendment) Act, 1940, was a measure which complied with Article 15 (art. 15) of the Convention in that it was "strictly required by the exigencies of the situation."

It remains to consider whether the conditions for arrest laid down in the 1940 Act were fulfilled in the

person of the Applicant.

There is no doubt that the Applicant had been a member of the IRA. There is likewise no doubt that the IRA was an unlawful and secret organisation which the Irish Government had never ceased to combat.

The Applicant's arrest in July 1957 fitted into the general campaign launched by the Irish Government to suppress the activities of that unlawful and secret organisation. It is true that in July 1957 IRA activities were on the wane, but that diminution was itself a deliberate policy on the part of the organisation. To appreciate that fact at its true value, it must not be taken in isolation but must be considered in conjunction with the IRA's previous activities, which necessarily offered a precedent for assessing the activities the organisation might engage in later.

Furthermore, since the Applicant was a former IRA member, the Irish Government, suspecting that even if he had ceased to be a member he was always liable to engage in activities fostering the aims of that organisation, applied the 1940 Act to his person legally.

In addition, out of respect for the individual, the Irish Government merely required of the Applicant, as the condition of his release, a simple assurance that he would in future acknowledge "the Constitution of Ireland and the laws". That condition cannot be considered to have been contrary to the Convention.

There is nothing in the condition which offends against personal dignity or which could be considered a breach of the obligations of States under the Convention. It would have to be held repugnant to the Convention, for example, if the State were to assume the power to require the Applicant to repudiate the political beliefs for which he was fighting as a member of the IRA. Such a requirement would certainly be contrary to Article 10 (art. 10), whereby everyone has the right to freedom of expression and freedom to hold opinions and to receive and impart information and ideas. But the text of that Article itself shows that the undertaking required of the Applicant by the Irish Government as the condition of his release, namely an undertaking to respect thenceforth the Constitution of Ireland and the laws, was in keeping with the true spirit of the Convention. This is apparent from the enumeration of cases where, under most of the Articles, the State is authorised to restrict or even prevent the exercise of the individual rights. And these cases are in fact those involving the preservation of public safety, national security and territorial integrity and the maintenance of order (Articles 2 (2) (c), 4 (3) (c), 5, 6, 8 (2), 9 (2) and 11 (2)) (art. 2-2-c, art. 4-3-c, art. 5, art. 6, art. 8-2, art. 9-2, art. 11-2).

Hence, if each Contracting State secures to everyone within its jurisdiction the rights and freedoms defined in Section I of the Convention (Article 1) (art. 1) and moreover undertakes to enforce the said rights and freedoms (Article 13) (art. 13), the individual is bound in return, whatever his private or even his avowed beliefs, to conduct himself loyally towards the State and cannot be regarded as released from that obligation. This is the principle that underlies the aforementioned reservations to and limitations of the rights set forth in the Convention. The same spirit underlies Article 17 (art. 17) of the Convention, and the same general legal principle was stated in the Roman maxim: *nemo ex suo delicto meliorem suam conditionem facere potest* (Dig. 50.17.134 paragraph 4). (*Nemo turpitudinem suam allegans auditur*).

It follows from the foregoing that the Irish Government, in demanding of the Applicant that he give an assurance that he would conduct himself in conformity with the Constitution and the laws of Ireland, were merely reminding him of his duty of loyalty to constituted authority and in no way infringed the rights and freedoms set forth in the Convention, including the freedom of conscience guaranteed by Article 9 (art. 9).

It is true that the Applicant was arrested on 11th July 1957 under the 1940 Act and that on 16th July 1957 he was informed that he would be released provided he gave an undertaking in writing "to respect the Constitution of Ireland and the laws" and not to "be a member of, or assist, any organisation which is an unlawful organisation under the Offences against the State Act, 1939."

Between 16th July and 10th December 1957 the Applicant refused to make the said declaration, presumably because he was awaiting the outcome of the petition he submitted on 8th September 1957, whereby he

applied "to have the continuation of his detention considered by a special Commission set up under section 8 of the 1940 Act," and also of the Application he made on 8th September 1957 to the Irish High Court, under Article 40 of the Irish Constitution, for a Conditional Order of habeas corpus ad subjiciendum. The High Court and, on appeal, the Supreme Court decided against the Applicant. The Supreme Court gave its reasoned judgment on 3rd December 1957, and the Detention Commission resumed its hearings on 6th and 10th December 1957. The Applicant then gave the Detention Commission a verbal undertaking not to engage in any illegal activities under the Offences against the State Acts, 1939 and 1940.

During the period between his arrest (11th July 1957) and 10th December 1957, the Applicant appealed to the High Court and the Supreme Court and refused, while the matter was sub judice, to give the assurance which the Irish Government made the condition of his release. Having so acted, the Applicant has no ground for complaint of having been deprived of his liberty during that period.

It is apparent from what has been stated above that the 1940 Act amending that of 1939 cannot be criticised as conflicting with Article 15 (art. 15) of the Convention and that the measures prescribed by the Act are derogations in conformity with the reservations formulated in Article 5 (1) (c) and (3) (art. 5-1-c, art. 5-3). It follows that there is no cause to examine the merits of the allegation that the Irish Government violated their obligations under the latter provisions.

On the other hand, the Applicant's Application cannot be declared inadmissible by relying on Article 17 (art. 17) of the Convention, since that Article (art. 17) is designed to preclude any construction of the clauses of the Convention which would pervert the rights and freedoms guaranteed therein and make them serve tendencies or activities repugnant to the spirit of the Convention as defined in its Preamble. The Applicant, however improper his conduct may have been, cannot be held to have engaged in any activity forbidden by Article 17 (art. 17) such as would warrant the rejection of his Application as inadmissible under the terms of that text.

Signed: G. MARIDAKIS