

CONSEIL DE L'EUROPE - COUNCIL OF EUROPE

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FIRST CASE BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

Lawless application brought by the Commission

The application of Gerard LAWLESS against the Irish Government has been referred to the European Court of Human Rights. The Court, whose jurisdiction is final and binding upon eight countries, including Ireland, will now consider the application. This case, which has been referred to the Court by the European Commission of Human Rights, is the first to be brought before it. The Directorate of Human Rights of the Council of Europe has issued the following statement:

"The European Commission of Human Rights, during its session at Strasbourg between 28th March and 2nd April 1960 decided to refer to the European Court of Human Rights the case of Gerard Richard LAWLESS v. The Government of Ireland. The Commission on 1st February of this year submitted to the Committee of Ministers in accordance with Article 31 of the Convention its Report on this case. In its Report the Commission by a majority expressed the opinion that the detention of Gerard Richard LAWLESS between 13th July and 11th December 1957 by an Order of the Minister of Justice made under the Offences Against the State (Amendment) Act, 1940, did not violate the provisions of the European Convention of Human Rights and Fundamental Freedoms, having regard to the public emergency existing in the Republic of Ireland at that time and the right of the Government under Article 15 of the Convention to take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation. In view of the fact that the Republic of Ireland has accepted the jurisdiction of the European Court and of the fundamental importance of the legal issues in the case, the Commission considered that it should refer the case to the Court, rather than to the Committee of Ministers, for final decision."

Ireland has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, recognised the right of petition by individual citizens and accepted the compulsory jurisdiction of the European Court inaugurated on 21st April, 1959.

BACKGROUND TO THE LAWLESS PETITION

On 8th November, 1957, Gerard LAWLESS, a 22-year-old Irish national from Dublin, lodged an application with the European Commission of Human Rights against the Republic of Ireland.

Lawless' principal complaint was that on 11th July, 1957, he was arrested on suspicion of belonging to an illegal organisation (the I.R.A.) and held without charge or trial in the Curragh Internment Camp until 11th December, 1957, by an order of the Minister for Justice under "The Offences Against the State (Amendment) Act, 1940". He alleged that his detention constituted a breach of the European Convention on Human Rights, in particular of Articles 5 and 6, guaranteeing the right to liberty and security of person and to the proper administration of justice. Lawless claimed damages for his imprisonment.

After written pleadings and oral hearings, the Commission declared the application admissible on 30th August, 1958. In accordance with the Convention it set up a Sub-Commission of seven members, presided over by Mr. C. Th. Eustathiades, Vice-President of the Commission, to ascertain the facts of the case and attempt to secure a friendly settlement. After a series of pleadings the Sub-Commission reported to the plenary Commission its inability to arrange such a settlement. The Commission considered the Sub-Commission's report and adopted its own on 19th December, 1959. This report, which remains secret, gives the Commission's opinion as to whether or not there has been a violation of the Convention. It was transmitted to the Committee of Ministers and the Government of Ireland, as provided by the Convention, on 1st February, 1960.

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The Convention states that both the Commission and the State concerned have the option of bringing a case before the **European** Court of Human Rights within 3 months of the date of transmission of the Commission's report to the Committee of Ministers. This the Commission has now done. In accordance with the Convention and its Rules of Procedure, the Court will now establish a Chamber of seven judges to consider the case.

The judgment of the Court is final. Should it find a violation proven, the Committee of Ministers of the Council of **Europe** would be responsible for supervising the execution of **the** judgment.