

AS TO THE ADMISSIBILITY

The European Commission of Human Rights sitting in private on 2 December 1986, the following members being present:

MM. C. A. NØRGAARD
E. BUSUTTIL
G. JÖRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
Mrs G. H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ

Mr. H. C. KRÜGER, Secretary to the Commission

Having regard to Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 November 1986 by G.K. and B.J.F. against the Netherlands and registered on 20 November 1986 under file No. 12543/86;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case as they have been submitted by the applicants may be summarised as follows.

The first applicant was born on 5 April 1953 at Belfast, Northern Ireland. At the time of lodging the application he was detained at a prison in Amsterdam, the Netherlands.

The second applicant was born on 9 October 1951 at Belfast. When lodging the application he was detained at a prison in Maastricht, the Netherlands.

In the proceedings before the Commission, the applicants are represented by Mr. W.J. van Bennekom, a lawyer practising at Amsterdam.

It appears that both applicants are members of the Irish Republican Army (IRA). On 8 March 1972, the first applicant received two life sentences and a prison sentence of twenty years, having been convicted of several bombings, by a United Kingdom court.

The second applicant received a life sentence, as well as prison sentences of fourteen and seven years, on 13 August 1975, having been convicted of several bombings and homicide, by a United Kingdom court.

It further appears that the applicants, together with other prisoners, escaped from the Maze Prison at Belfast on 25 September 1983.

On 16 January 1986 the applicants were arrested by the Amsterdam police at the request of the British authorities, who subsequently, on 3 February 1986, demanded the applicants' extradition for the execution of the applicants' prison sentences and for the prosecution of several criminal offences committed during their escape from the Maze Prison.

On 25 March 1986 the Regional Court (Arondissementsrechtbank) of Amsterdam authorised the second applicant's extradition exclusively for the execution of his life sentence but refused to authorise the first applicant's extradition. In its advice to the Minister of Justice the Regional Court drew the Minister's attention to the fact that the second applicant feared he would be subjected to inhuman and degrading treatment when returned to Northern Ireland, especially because of acts of revenge by the prison guards. The Minister was asked to bring this to the attention of the British authorities.

Both the second applicant and the Public Prosecutor appealed against the decision of the Regional Court.

On 1 July 1986, the Supreme Court (Hoge Raad) rejected the appeal by the second applicant but quashed the decision of the Regional Court insofar as the first applicant's extradition had not been authorised and insofar as the second applicant's extradition had not been authorised on certain points. After a hearing on 10 September 1986, the Supreme Court, on 21 October 1986, authorised the applicants' extradition for certain offences the applicants allegedly committed during their escape from prison on 25 September 1983. The extradition was not authorised on any other ground.

Consequently, the first applicant's extradition was exclusively authorised for the prosecution of certain offences he allegedly committed during his escape from the Maze Prison. The second

applicant's extradition was authorised both for the further execution of his life sentence (since this part of the decision by the Regional Court of Amsterdam was upheld by the Supreme Court) and for the prosecution of certain offences he allegedly committed during his escape from the Maze Prison.

With regard to the applicants' allegations that they would be subjected to inhuman and degrading treatment contrary to Article 3 (art. 3) of the Convention and that they would have no fair hearing as guaranteed by Article 6 (art. 6) of the Convention, the Supreme Court noted that the United Kingdom was a Party to the Convention and had made a declaration under Article 25 (art. 25) of the Convention. Consequently, Dutch courts were not at liberty to decide on these complaints.

By letters of 21 October 1986, the President of the Supreme Court informed the Minister of Justice that the Supreme Court shared the applicants' concern that they would be subjected to a very harsh treatment when returned to Northern Ireland. The President therefore suggested that the Minister would approach his British counterpart in order that measures be taken to avert this danger.

On 13 November 1986, the Deputy Minister of Justice decided to authorise the extradition of both applicants for the prosecution of certain offences committed during their escape and also for the further execution of the second applicant's life sentence. In both decisions the Deputy Minister had regard to information submitted by the Northern Ireland Prison Department to the effect that after the applicants' return to Northern Ireland they would have to be kept in Maze Prison, it being the only high security prison in Northern Ireland, where they would be treated in the same manner as all other prisoners and where they would have the same rights as other prisoners to complain about prison treatment. It was also stated that the experience of other prisoners who had escaped in September 1983 and had then been recaptured gave no reason to believe that the applicants would be at risk as a result of action either by staff or by other prisoners. The Deputy Minister also referred to the following statement by the Deputy Director of H.M. Prison Maze: "should [the applicants] be returned to the custody of the Northern Ireland Prison authorities, they would have no reason to fear that they would be subjected to any assault, ill-treatment or irregular practice at the hand of any prison officer" and that "they would have all the same rights and receive the same treatment as other prisoners".

COMPLAINTS

The applicants complain that the Dutch authorities, by extraditing them to the United Kingdom, violate Articles 3 (art. 3) and 6 para. 1 (art. 6-1) of the Convention. They claim that they will be subjected to inhuman and degrading treatment by prison guards as well as by

other prisoners and that they will not have a fair trial by an independent and impartial tribunal.

With regard to their complaints under Article 3 (art. 3) of the Convention, the applicants submit that many authoritative persons and organisations, including the Dutch section of the International Commission of Jurists, the "Fédération Internationale des Droits de l'Homme", the "Association Internationale des Juristes Démocrates", and the "Haldane Society", have addressed themselves to the Dutch Deputy Minister of Justice, requesting her not to extradite the applicants.

The applicants also refer to the opinion of the Supreme Court, as expressed in its letter to the Minister of Justice. They claim that they will not only be ill-treated in prison but that there is also a conspiracy to kill them because of their part in the escape from the Maze Prison. In this respect they refer to a letter of 5 February 1986 of a Republican prisoner, who was also involved in the escape of 25 September 1983.

With respect to their complaints under Article 6 para. 1 (art. 6-1) of the Convention, the applicants claim that the so-called "Diplock-courts" which would decide on the charges brought against them do not meet the requirements of that provision.

THE LAW

1. The applicants have complained that the Dutch authorities, when extraditing them to the United Kingdom, would violate their rights under Article 3 (art. 3) of the Convention which provides:

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

The Commission recalls that extradition is not as such among the matters covered by the Convention (cf. e.g. No. 7256/75, Dec. 10.12.1976, DR 8, p. 161).

However, the Commission has recognised in its previous case-law that a person's extradition may, exceptionally, give rise to issues under Article 3 (art. 3) of the Convention where extradition is contemplated to a country in which "due to the very nature of the regime of that country or to a particular situation in that country, basic human rights, such as are guaranteed by the Convention, might be either grossly violated or entirely suppressed" (No. 1802/62, Dec. 26.3.1963, Yearbook 6 p. 462 at 480). The Commission has further recognised that:

"although extradition and the right of asylum are not, as such, among the matters governed by the Convention ... the Contracting States have

nevertheless accepted to restrict the free exercise of their powers under general and international law, including the power to control the entry and exit of aliens, to the extent and within the limits of the obligations which they have assumed under the Convention" (No. 2143/64, Dec. 30.6.1964, Yearbook 7 p. 314 at 328).

If conditions in a country are such that the risk of serious treatment and the severity of that treatment fall within the scope of Article 3 (art. 3) of the Convention, a decision to deport, extradite or expel an individual to face such conditions incurs the responsibility under Article 1 of the Convention of the Contracting State which so decides (cf. No. 10308/83, Dec. 3.5.1983, DR 36, p. 209 at 231).

The applicants have alleged that they will be subjected to inhuman and degrading treatment by prison guards and other prisoners when returned to Northern Ireland. In support of these allegations they have submitted a letter from a prisoner at the Maze Prison, who was also involved in the escape of 25 September 1983.

The Commission notes that the British authorities informed the Dutch Minister of Justice that the applicants, should they be returned to the custody of the Northern Ireland prison authorities, would have to be held in the Maze Prison as it is the only high security prison in Northern Ireland.

However, the Commission also notes that the British authorities informed the Dutch Minister of Justice that the experience with other recaptured prisoners at the Maze Prison gave no reason to believe that the applicants would be at risk as a result of action either by staff or by other prisoners. In addition, the Commission has had regard to the statement by the Deputy Director of the Maze Prison.

In view of this information, and in the absence of any corroborating evidence to the letter submitted by the applicants, the Commission finds that it has not been demonstrated that the applicants' alleged treatment and punishment would attain the necessary degree of seriousness so as to fall within the scope of Article 3 (art. 3) of the Convention.

In addition, the Commission attaches importance to the fact that the case concerns extradition to a High Contracting Party to the European Convention on Human Rights, which has recognised the right of individual petition as set forth in Article 25 (art. 25) of the Convention.

Under these circumstances, the Commission finds that Article 3 (art. 3) of the Convention does not prevent the Netherlands from extraditing the applicants to the United Kingdom.

Consequently, this part of the application must be rejected as being

manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

2. The applicants have also complained that they will not have a fair trial upon extradition to the United Kingdom and they have invoked Article 6 para. 1 (art. 6-1) of the Convention in this respect which provides, inter alia:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal ..."

However, the Commission finds that, as far as Article 6 (art. 6) of the Convention is concerned, the United Kingdom Government are exclusively responsible under the Convention for the applicants' trial in the United Kingdom and that the extradition can in no way engage the responsibility of the Netherlands Government under Article 6 (art. 6) of the Convention.

The Commission leaves it open whether in exceptional circumstances the extradition of a person for the purpose of prosecution before a court lacking even the most fundamental legal guarantees could raise a problem under Article 3 (art. 3) of the Convention, since no such issue could arise in the present case.

It follows that this part of the application is incompatible with the Convention *ratione personae* within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)