



**International covenant  
on civil and political  
rights**

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HUMAN RIGHTS COMMITTEE

Eighty-seventh session  
10 – 28 July 2006

**VIEWS**

**Communication No. 1314/2004**

<u>Submitted by:</u>	Michael O'Neill and John Quinn (represented by counsel, Mr. Michael Farrell)
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	Ireland
<u>Date of communication:</u>	14 September 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 September 2004 (not issued in document form)
<u>Date of adoption of Views:</u>	24 July 2006

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Discrimination by the executive with respect to the application of an early release scheme for prisoners

*Procedural issues:* None

*Substantive issues:* Equality before the law and equal protection of the law

*Articles of the Covenant:* 9, paragraph 1; 14, paragraph 1; 26; 2, paragraphs 1 and 3

*Articles of the Optional Protocol:* None

On 24 July 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1314/2004. The text of the Views is appended to the present document.

[ANNEX]

**ANNEX**

Views of the Human Rights Committee under article 5, paragraph 4, of  
the Optional Protocol to the International Covenant on Civil and Political rights

Eighty-seventh session

concerning

**Communication No. 1314/2004\***

<u>Submitted by:</u>	Michael O'Neill and John Quinn (represented by counsel, Mr. Michael Farrell)
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	Ireland
<u>Date of communication:</u>	14 September 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International  
Covenant on Civil and Political Rights,

Meeting on 24 July 2006,

Having concluded its consideration of communication No. 1314/2004, submitted to the  
Human Rights Committee on behalf of Michael O'Neill and John Quinn under the Optional  
Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of  
the communication, and the State party,

Adopts the following:

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\* The following members of the Committee participated in the examination of the present  
communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal  
Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson,  
Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Elisabeth Palm,  
Mr. Rafael Rivas Posada, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth  
Wedgwood and Mr. Roman Wieruszewski.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Michael  
O'Flaherty did not participate in the adoption of the present decision.

The text of three individual opinions signed by Committee members Mr. Hipólito Solari-  
Yrigoyen, Ms. Ruth Wedgwood, Mr. Rajsoomer Lallah and Ms. Christine Chanet are  
appended to the current document.

### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The authors of the communication are Michael O'Neill and John Quinn, both Irish nationals, born on 10 February 1951 and 8 November 1967, respectively. They claim to be victims of violations by Ireland of their rights under article 2, paragraphs 1 and 3; article 9, paragraph 1; article 14, paragraph 1; and article 26, of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for Ireland on 8 March 1990. They are represented by counsel, Mr. Michael Farrell, Solicitor.

#### **Factual background**

2.1 On 3 February 1999, Michael O'Neill was convicted by the Special Criminal Court of the manslaughter of a police officer (Garda), Detective Garda Jerry McCabe (hereinafter referred to as "Garda McCabe"), the malicious wounding of another police officer and possession of firearms with intent to commit an offence. These offences arose out of an attempted robbery of a mail van in Adare, Co. Limerick, Ireland, on 7 June 1996. Mr. O'Neil pleaded guilty and he was sentenced to eleven years imprisonment on the charge of manslaughter and two terms of five years imprisonment on the other charges; all sentences to run concurrently. Although he had been in custody since 20 June 1996, the sentences were dated from February 1999 and he is due for release with full remission on 17 May 2007.

2.2 In February 1999, Mr. Quinn pleaded guilty to and was convicted of conspiring to commit the above mentioned robbery by the Special Criminal Court and was sentenced to six years imprisonment. He was released on 8 August 2003, after completing his sentence with normal remission. Three other persons were convicted of the manslaughter of Garda McCabe, the malicious wounding of the other policeman, and possession of firearms with intent. They were sentenced to terms of imprisonment ranging from twelve to fourteen years.

2.3 The attempted robbery was carried out on behalf of the Provisional Irish Republican Army (IRA), an illegal paramilitary organisation involved in the armed conflict in Northern Ireland, which frequently spilled over into Great Britain and the State party. The robbery and shooting were initially denied by the Provisional IRA but were subsequently admitted by it. All five persons convicted were recognised by the Irish Prison Authorities and the Department of Justice, Equality and Law Reform, (hereafter referred to as the Department of Justice), as belonging to the Provisional IRA and were held in a separate part of the prison reserved for such prisoners.

#### *The Good Friday Agreement and the release of prisoners' scheme*

2.4 There was a prolonged and violent conflict in Northern Ireland since the beginning of the 1970's. In August 1994, the Provisional IRA had declared a ceasefire followed by similar declarations by Loyalist paramilitary groups, i.e. groups supporting the continuance of the connection between Northern Ireland and the United Kingdom. The IRA resumed its violent campaign in February 1996, and it was during this period that the offence in question occurred. A ceasefire was declared in September 1997, which has lasted to date.

2.5 On 10 April 1998, a formal international agreement between the Governments of the United Kingdom and Ireland, (the British-Irish Agreement) and a political agreement between the two Governments and the various political parties was reached (Multi-Party Agreement). Under the terms of the former agreement the two Governments, inter alia,

undertake as a matter of international law “to support and, where appropriate implement, the terms of the Multi-Party Agreement”. This package of agreements was formally known as the "Agreement reached in the Multiparty Negotiations", but is generally referred to as the Good Friday Agreement (hereinafter referred to as the “GFA”).

2.6 One section of the GFA, entitled "Prisoners" provided that both the United Kingdom and Irish Governments would establish mechanisms to enable the early release of prisoners convicted of "scheduled offences" in Northern Ireland or similar offences committed elsewhere. "Scheduled offences" were offences committed by or on behalf of paramilitary organisations connected with the Northern Ireland conflict. Prisoners affiliated to organisations which were not maintaining complete and unequivocal ceasefires would not benefit from the early release provisions. It was envisaged under the GFA that all qualifying prisoners would be released at the end of two years after commencement of the scheme if not before<sup>1</sup>.

2.7 The Prisoner Release scheme was implemented in the State party by the Criminal Justice (Release of Prisoners) Act, 1998 (hereinafter referred to as “the 1998 Act”). The 1998 Act did not confer new release powers on the Minister for Justice, Equality and Law Reform (hereafter referred to as “the Justice Minister”). The releases were to be effected under existing discretionary powers (section 33 of the Offences against the State Act 1939, see para. 4.3 below), but the Act provided for the establishment of a Commission to advise the Justice Minister in relation to the release of prisoners pursuant to the GFA. The Act provided, however, that the Commission could only advise the Minister in relation to prisoners who had already been specified by him to be "qualifying prisoners for the purposes of the Good Friday Agreement". Accordingly, the key decision in relation to the release of any prisoner under the scheme was the decision as to whether or not that person was a "qualifying prisoner"<sup>2</sup>. On 28 July 1998, the release scheme commenced. In a joint statement issued on 5 May 2000, the Prime Ministers of the United Kingdom and Ireland stated "It is intended that, in accordance with the GFA, all remaining prisoners qualifying for early release will be released by the 28th July 2000". Figures issued by the two Governments on 14 July 2001 confirmed that 444 qualifying prisoners had been released in Northern Ireland under the GFA, and 57 had been released in the State party.

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<sup>1</sup> In the “prisoners” section ” of the GFA, it was stated that "... the intention would be that should the circumstances allow it, any qualifying prisoners who remained in custody two years after the commencement of the scheme would be released at that point".

<sup>2</sup> According to the 1998 Act, “qualifying prisoners” shall be construed in accordance with section 3 (2) of this Act”. Section 3 (2) states, “The Minister shall from time to time, as he or she considers appropriate, request the Commission to give advice with respect to the exercise, by reference to the relevant provisions, of any power referred to in subsection (1) of this section in relation to persons specified by the Minister to be qualifying prisoners for the purposes of those provisions (in this Act referred to as “qualifying prisoners”) and the Commission shall comply with such a request.”

“[R]elevant provisions” mean “those provisions of the Agreement reached in the Multi-Party Talks which appear under the heading “Prisoners” in that Agreement.”

Under the “prisoners” heading in the GFA, it stated *inter alia* that the prisoners must have been convicted of an offence similar to a scheduled offence in Northern Ireland and must not be affiliated to organisations that are not maintaining a complete and unequivocal cease-fire.

*The authors' requests for release*

2.8 On 25 July 2000, the authors wrote to the Justice Minister requesting confirmation that he had specified them as "qualifying prisoners" for the purpose of the early release scheme, and requesting their release pursuant to the GFA and the 1998 Act. They added that if the Minister did not intend to accede to this application, he should furnish them with the reasons for his decision and give them the opportunity to make representations in connection therewith. By 30 July 2001, and despite a number of further letters to the Minister, the authors had received only acknowledgements of receipt of these letters. During this period, the Justice Minister had made a number of statements, both publicly and in letters to private individuals, to the effect that prisoners convicted in connection with the death of Garda McCabe would not be released under the GFA. According to the authors, a number of prisoners had been released in the State party who had been convicted of offences as grave as or graver than those committed by the authors, including the Offence of Capital Murder of members of the police force<sup>3</sup>. A large number of prisoners had been released in Northern Ireland, who had been convicted of the murder of police officers there.

2.9 In or around 2002, the authors obtained four documents from the Department of Justice, under freedom of information legislation. The first document dated, 4 October 2000, set out "the criteria for consideration under the provisions of the Good Friday Agreement" namely that the prisoners' "offences pre-date the GFA and were committed on behalf of an organisation to which the terms of the GFA apply". The document gave a list of persons who had been sentenced to life imprisonment for murder and whom it recommended should be referred to the Release of Prisoners Commission. One of the persons listed had been convicted of the murder of a member of the police force (Garda Siochana), and the documents stated that other persons convicted with him for that murder had already been released under the terms of the GFA. The second document, undated, indicated that prisoners convicted before the Special Criminal Court in the State party, in respect of offences similar to scheduled offences in Northern Ireland, which had been committed before the signing of the GFA, and who were affiliated to the Provisional IRA or another paramilitary organisation called the INLA, would qualify for release under the terms of the GFA. According to the authors, the offences committed by them clearly came within the criteria set out in these two documents.

2.10 The third document was in question and answer form, and indicated that prisoners convicted after 10 April 1998, (the date of the conclusion of the GFA) for offences committed before that date would be covered by the early release scheme, with the exception of any persons "convicted of the murder" of Garda McCabe. The document went on to discuss how long prisoners convicted after 10 April 1998 of pre-GFA offences would have to serve before they would be released. This document acknowledged that an exception was being made in the case of persons convicted of the murder of Garda McCabe and said that "this was a political judgement made against the background of the need to ensure public support for the terms of the GFA". The document said that "persons convicted of the murder of other Gardai [police officers] - who have already served long sentences - will be covered

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<sup>3</sup> The death penalty was retained in Ireland until 1990 for the murder of police officers on duty, known as "capital murder" but all such sentences were commuted to 40 years imprisonment without remission. In 1990 the death penalty was abolished for all offences but a mandatory minimum sentence of 40 years was prescribed for capital murder.

by the prisoner release arrangements". The fourth document, dated 17 August 2001, is a letter from the Irish Prisons Service, (then a division of the Department of Justice) addressed to the Governor of Portlaoise Prison and to a prisoner whose name had been erased, but who had sought early release under the GFA. It stated that the Minister was not inclined to specify the prisoner concerned as a qualifying prisoner and gave the Minister's reasons for this. However, it invited the prisoner to make further representations if he so wished.

2.11 On 30 July 2001, as no reply had been forthcoming from the Justice Minister, the authors applied to the High Court and were granted leave to take judicial review proceedings seeking, *inter alia*, a declaration that they were "qualifying prisoners" for the purposes of the GFA and the 1998 Act. Judicial review in the State party proceeds by way of affidavit evidence. The respondents did not file any replying affidavits and did not contradict any of the evidence adduced on behalf of the authors. By letter of 5 June 2002, the Justice Minister replied to the authors' request to be specified as qualifying prisoners, stating that they had not been specified and that any such decision referred "to privileges or concessions" and was not subject to the procedures that had been requested by the authors.

2.12 On 26 and 27 November 2002, the authors' case was heard in the High Court and judgment was given on 27 March 2003. The judgement states that "... it seems clear and it is not in fact contested by the respondents, since they have filed no affidavit, that the applicants, were they to be considered for release by the Minister, do fall within the category of prisoner who would be eligible for release under the relevant provisions." However, it was held that Section 3 (2), of the 1998 Act, gave the Minister "an absolute discretion" as to whether to request advice from the Release of Prisoners Commission about whether or not to release individual prisoners. Accordingly, there was no obligation on the Minister to consider any particular person for release. Thus, he could not be said to have acted capriciously, arbitrarily or unjustly in refusing to specify the authors as qualifying prisoners. He dismissed their application for judicial review.

2.13 The authors appealed to the Supreme Court which gave judgment on 29 January 2004. The Court noted that although it was undisputed that at the time the offences were committed and the authors were convicted, they were affiliated to the Provisional IRA, "it is accepted that neither of the applicants is now affiliated to an organisation which is not maintaining a complete and unequivocal cease-fire". The Court referred to the Question and Answer document (para. 2.10 above). It held that the GFA had not been incorporated into Irish law and conferred no specific rights on individuals. The power to release prisoners was a "quintessentially executive function and a discretionary one." However, it held that the High Court judge's characterization of this discretion as "absolute" was too wide - any such power had to be exercised in good faith and not in an arbitrary, capricious or irrational manner.

2.14 In conclusion, the Court distinguished between the authors' case and those of other prisoners who had been released after committing equally or more serious crimes, on the grounds that the latter group had all been tried and convicted at the time the GFA was concluded. Given this distinction, the Court held that to make a decision that no one convicted in connection with the murder in question should be released, was "a policy choice, which it was entirely within the discretion of the Executive to make, and could not be characterised as capricious, arbitrary or irrational". It rejected the claim that the refusal to specify them as qualifying prisoners constituted unfair discrimination between them and others who had committed crimes of equal or greater gravity, and reiterated that, on the basis

of the presumed distinction, the authors were not in the same position as those convicted of similar or graver offences. The Supreme Court rejected the authors' appeal.

2.15 According to the authors, the distinction made by the Supreme Court between the authors and those convicted with them, and other persons released under the GFA, was not put to counsel for the authors during the hearing. They were given no indication that the Court regarded this as a significant issue. It was mentioned in one speculative query by the Chief Justice during a series of exchanges between members of the Court and counsel for the respondents, a query to which counsel did not respond. It was factually erroneous, too. The question and answer document obtained under freedom of information legislation (para. 2.10 above) and referred to in both the High Court and Supreme Court judgments, had made it clear that the release provisions applied to persons convicted after the GFA as well as before it. In fact, two persons had been released in the State party who had been convicted after the GFA for offences committed before it, and at least eleven persons convicted after the GFA for pre-GFA offences had been released in Northern Ireland, confirming that the authorities there made no such distinction between convictions imposed before or after 10 April 1998. The cases in question had not been specifically drawn to the attention of the High Court as no one had sought to make such a distinction. It was undisputed in the High Court that, were the authors to be considered by the Minister, they would fall into the category of persons who would be eligible for release under the relevant provisions. This was not contested by the respondents. Similarly, this information had not been brought to the attention of the Supreme Court because, as an appellate Court, it proceeds on the basis of the evidence that was before the lower Court. In this case, neither side had sought to challenge the finding by the High Court that the authors met the criteria for eligibility for the early release scheme.

2.16 On 12 February 2004, the authors issued a motion seeking to have the judgment and order of the Supreme Court set aside or corrected and seeking a re-hearing of their appeal. The grounding affidavit for the application gave details of the two persons who had been released in the State party following post GFA convictions, and also of a larger number of persons in similar circumstances who had been released in Northern Ireland. In a sworn affidavit of 4 March 2004, the respondents confirmed the release of the two individuals convicted after the GFA but denied that their cases were comparable to those of the authors. On 1 April 2004, the authors' application was heard by the same panel of the Supreme Court, which held that the facts in relation to the point at issue, "were agreed and were not in issue at any stage in the case." The Court was satisfied that counsel for the authors had every opportunity to deal fully with the matter and dismissed the application.

### **The Complaint**

3.1 The authors claim that they were discriminated against, under articles 2, paragraph 1, and 26, by the refusal of the Justice Minister to specify them as qualifying prisoners under the 1998 Act. They claim that they meet all the criteria for release under this scheme, set out in the four documents abovementioned, which originated from the Department of Justice, but that the Justice Minister arbitrarily refused to include them in the scheme. They claim that they are the only persons meeting the criteria who have been excluded from the scheme and that other persons convicted of comparable and even graver offences were specified as qualifying prisoners.



3.2 The authors argue that the Justice Minister's discretion must not be exercised in an arbitrary, irrational or discriminatory manner, and must be exercised within the criteria used in administering the early release scheme. Prior to the judicial review proceedings, no reasons were given for the authors' exclusion. The reason given after the commencement of proceedings did not relate to the objectives of the scheme but to extraneous political considerations. Furthermore, the authors were not afforded the benefit of procedures that were afforded to other prisoners seeking early release, namely an invitation to make representations prior to determination of the applicant's claim. Thus, the authors were discriminated against in the way that their applications were dealt with and by the refusal to specify them as "qualifying prisoners", and to grant them release.

3.3 The authors claim a violation of article 9, paragraph 1, since although they were originally detained pursuant to a valid court decision, their continued detention became arbitrary, following the Justice Minister's refusal, on discriminatory grounds, to include them in the early release scheme. They also claim that they were denied a fair hearing under article 14, paragraph 1, in that the Supreme Court dismissed their appeal on grounds which were manifestly erroneous, not having afforded the authors' legal representatives an opportunity to make submissions on or to rebut the incorrect assumption upon which the Court based its decision. The denial of a fair hearing was compounded by the refusal of the Supreme Court to set aside or vary its decision when presented with evidence that that decision was based on an erroneous assumption.

3.4 The authors claim that they were denied an effective remedy, under article 2, paragraph 3, because the State party's courts failed to protect them against discrimination in the operation of the early release scheme, including the denial of procedures made available to other prisoners. They also claim that they were denied an effective remedy because there was no avenue of redress after the Supreme Court had rejected their appeal on clearly erroneous grounds, and failed to afford them fair procedures during the hearing of their appeal.

3.5 Finally, the authors claim that the decision of the Supreme Court to award costs against them in respect of their application to set aside the Court's decision or to agree to a re-hearing of their appeal was a breach of their right to an effective remedy. It is argued that his decision penalised the authors for attempting to secure redress for a decision based on incorrect facts. The authors claim that they should have been afforded a forum where this could be reasonably assessed and corrected if their contention was found to have merit. Instead, the same panel of the Supreme Court simply refused to reconsider the factual decision, suggesting instead that the authors' representatives had had adequate opportunity to rebut findings of fact.

#### **The State party's submission on admissibility**

4.1 On 22 December 2004, the State party contests the admissibility of the communication. It confirms the facts as set out by the authors with respect to the incident of which they were convicted. It submits that prior to commission of the offences, the State party had been engaging in difficult and sensitive negotiations, known as the "peace process", with the United Kingdom and a number of interested political parties in Northern Ireland. It states that the offences caused outrage throughout the State and that, during the trial, prosecution witnesses refused to give evidence or contended that they could not recall anything of the event. It submits that the GFA is a matter of considerable political, historical, constitutional

and legal significance in Ireland. To consent to be bound by the British-Irish Agreement, and pursuant to its obligations under the Multi-Party Agreement, the State party's Government proposed amendments to the Irish Constitution, which were approved by referendum on 22 May 1998.

4.2 The State party submits that the authors were never deemed to come within the remit of the early release scheme. Before, during and after the negotiation of the GFA, the passage of the Amendment to the Irish Constitution and the introduction of the 1998 Act, the State party's Government repeatedly made clear that any provisions for the release of prisoners would not apply to any person convicted of involvement in the incident in which Garda McCabe was murdered. On successive occasions, members of the State party's Government made public pronouncements to this effect. The authors would have known that they would be excluded, through the negotiations of the GFA, the statements of members of Government in Parliament, in the print and other media and in the context of the referendum to amend the Constitution. At the time of submission, the State party stated that the negotiations of the GFA were at a critical point and that political representatives of the IRA were requesting the release of those convicted of involvement in the incident in question, under the provisions of the GFA. Without prejudice to its belief that these prisoners are not covered by the GFA, the State party's Government was prepared to consider their release as part of a final comprehensive agreement, which included independently verified decommissioning of all weapons, a complete end to paramilitary activity and an unambiguous end to all forms of IRA criminality. It submitted that the fact that the peace process had reached such a critical phase rendered inappropriate the authors' communication to the Committee on what is essentially a political issue intrinsic to the current negotiations.

4.3 For the State party, all of the authors' claims are inadmissible for being outside the scope of the Covenant. Under Irish law there is no right to release and no obligation on the State party's Government to release prisoners. There is no such right conferred either by the GFA, or the 1998 Act and this conclusion was reached by the Supreme Court in *Doherty v. Governor of Portlaoise Prison*. The authors were convicted after a trial held in due course of law. They also had an opportunity to challenge the decision of the executive arm of State to refuse them early release proceedings in the High and Supreme Courts. The State party explains that the power of commutation and remission of sentence imposed by a Special Criminal Court is provided for by section 33 of the Offences against the State Act 1939 in the following terms:

“Except in capital cases, the Government may, at their absolute discretion, at any time, remit in whole or in part, or modify (by way of mitigation only) or defer any punishment imposed by a Special Criminal Court.”

4.4 According to the State party, this discretion is to be exercised in broad terms. When the executive exercises such power or when discretion is conferred upon it, it is expected that the decision will be one of essentially political judgement, in contrast to a judicial or quasi-judicial determination. It is something for which, under article 28.4 of the Constitution, the Government is primarily responsible to the Irish Parliament (the Dáil). Any exercise of discretion must, however, be within the confines of the Constitution either express or implied. The State party confirms that the enabling provisions of the 1998 Act allow a Minister to deem a person to be a “qualifying prisoner”, but that the 1998 Act does not purport to confer

any additional power of commutation or remission of sentence<sup>4</sup>. The Advisory Commission, if requested, would provide non-binding advice to the Justice Minister. The mechanism created by the 1998 Act, thus creates, a further layer of discretion to be exercised by the Government under provisions such as Section 33 of the Offences against the State Act 1939.

4.5 According to the State party, the High Court and Supreme Court rejected the contention that the Justice Minister's discretion had been exercised in an arbitrary or capricious manner. The Courts accepted the argument that, in the light of the clear policy expressed by the Government publicly, those persons convicted of involvement in the incident in which Garda McCabe was murdered, would not benefit from the early release provisions of the 1998 Act. Thus, it could not be said that a decision to implement that established Government policy was either arbitrary or capricious. The State party adds that its Government must retain an entitlement to adopt a political stance on what a quintessentially political issue. It was the Government's judgement that public support for the GFA would be undermined if the early release scheme was available to those who were involved in the incident in which Garda McCabe was murdered. According to the State party, the authors' claims are tantamount to suggesting that the Human Rights Committee should intervene in the political arrangements, agreements and understandings of the various parties involved in the attempted settlement of the Northern Ireland conflict. In its view, the parties involved ought to be afforded a degree of latitude to carry out their negotiations and mutual obligations.

4.6 More particularly, the State party submits that the claims are outside the scope of articles 26 and 2. It was successfully argued before the domestic courts that the essence of any equality claim is that like persons must be treated alike. All persons convicted in relation to the incident in question were treated alike with respect to the prisoner release scheme. Those involved in the murder of Garda McCabe were deemed to constitute a different group of prisoners to whom any arrangements made pursuant to the GFA would not apply. The authors were aware of this and pleaded guilty when the Government's policy had been clearly announced. They differ from other possible beneficiaries of the scheme because the State party's Government considered that their release would not be tolerated by the People of Ireland. The State party rejects the argument that the fact that a discretionary State privilege has been granted to others in comparable circumstances gives rise to a legally enforceable right ; in this context, it refers to the United States Supreme Court's judgement in Connecticut Board of Pardons v. Dumshcat<sup>5</sup>. It argues that discrimination is permitted under article 26 if reasonable and objective criteria are applied, as in this case. As regards the conduct of the State party in releasing prisoners under the 1998 Act, it is submitted that "an analysis of statistics and other material does not assist the authors."

4.7 The State party submits that the crimes and the issues surrounding them were not comparable to other crimes. The incident in question occurred during a breakdown in the IRA cease-fire, at a stage when the State party's Government was involved in high level negotiations which would lead to the GFA. This was the first time anyone had been convicted of the murder of a police officer since the IRA's ceasefire. The violence used by the perpetrators was particularly savage, the victims were members of the Irish police force and senior members of the provisional IRA were involved in the incident. As to the claim under article 9, the State party submits that it is outside the scope of the Covenant. It contests the

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<sup>4</sup> Doherty v. Governor of Portlaoise Prison [2002] 2 IR 252.

<sup>5</sup> 452 US 458.

claim that the authors' detention is/was arbitrary and invokes the Committee's jurisprudence that "arbitrariness is not to be equated with against the law but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability"<sup>6</sup>. The authors served a sentence handed down by the appropriate judicial authorities in Ireland and nothing in domestic law required them to be released before the expiry of their sentences. The requirement to complete their sentences was predictable in light of Government policy.

4.8 The State party submits that the claims are outside the scope of article 14, in that this provision deals with procedural guarantees for trials and not with the substance of judgements handed down by courts. Where judicial error occurs in relation to the evaluation of the factual material before the court, it is not cognisable within the protections of the Covenant. The Committee should not operate as a fourth instance court, with the competence to review or re-evaluate findings of fact<sup>7</sup>. The authors' criticisms relate to what they perceive as erroneous findings of fact made by the Supreme Court in its determination of their application. The State party notes that the Court reviewed its judgement and was satisfied that the parties had had an opportunity to present and rebut all material before it. The same arguments apply to the claim under article 2.

4.9 The State party concludes that for these reasons, the communication should be declared inadmissible and requests that the admissibility of the communication be considered separately from the merits. On 28 December 2004, the Special Rapporteur on New Communications determined that the admissibility should be considered by the Committee at the same time as the merits.

### **The State party's submission on the merits**

5.1 On 23 March 2005, the State party comments on the merits and largely reiterates its arguments made on admissibility. As to factual developments, it submits that negotiations have been ongoing for an agreement on the outstanding aspects of the GFA. As to the State party's indication that it would consider the authors' early release in the context of securing a comprehensive settlement, an announcement by the Prime Minister (Taoiseach) in the Parliament (Dáil) to this effect had provoked strong public criticism and much debate in early December 2004. On 20 December 2004, the Northern Bank in Belfast was robbed by, it is believed, the IRA. Since this event, it has been made clear by the State party's Government that the question of the early release of those involved in the incident in which Garda McCabe was murdered is no longer considered. In a statement on 13 March 2005, the prisoners themselves stated that they did not want their release to be part of any further negotiations with the State party's Government.

5.2 The State party confirms that 57 prisoners have been released to date in Ireland under the terms of the GFA. With the exception of those who were released earlier under temporary release, the cases of these prisoners were referred by the Minister to the Release of Prisoners Commission, for advice with respect to the exercise of the power of release, in accordance with Section 3(2) of the 1998 Act. Three of the prisoners released were convicted after the GFA and released in June, July and September 2000. The prisoners had been convicted of the

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<sup>6</sup> Von Alphen v. the Netherlands, Case No. 305/1988, Views adopted on 23 July 1990.

<sup>7</sup> The State party refers to the case of B.D.B v. The Netherlands, Case No. 273/1988, decision of 30 March 1989.

possession of explosives, firearms and ammunition and had been sentenced for between four and seven years.

### **The authors' comments on the State party's submission**

6.1 On 3 June 2005, the authors comment on the State party's submission. They consider the State party's political arguments irrelevant and inappropriate. The GFA goes to some lengths to stress that respect for human rights must be an integral part of the peace process. Such respect would not be enhanced if the Committee refrained from examining allegations of breaches of human rights at sensitive points during political negotiations. In any event, the authors confirm that neither they nor the State party's Government wish their release to be part of further negotiations. Thus, the State party's objection to the Committee considering this case on political grounds would appear to have lost its foundation. Further, they argue that the State party's Government did not suggest to the Irish Courts that it would be inappropriate or improper for them to consider the authors' judicial review application.

6.2 The authors argue that they are not claiming that they enjoy a right to early release. They claim that where a special scheme has been introduced to grant early release to a defined group of prisoners, and where the authors appear *prima facie* to belong to that group, they have a right not to be discriminated against in the application of that scheme, unless reasonable and objective grounds are given for such discrimination. In this connection, the authors refer to the Committee's Views in Kavanagh v. Ireland.<sup>8</sup> As to the State party's suggestion that decisions by the Minister in relation to this scheme may not generally be reviewed, the authors note that the Supreme Court expressly held that the Minister's discretion must be exercised in conformity with the Irish Constitution and in a manner which was not arbitrary, capricious or irrational. As the State party is party to the Covenant, the Minister's discretion must be exercised in a non-discriminatory way, save upon reasonable and objective grounds. The authors accept that the power to release prisoners early is contained in pre-existing legislation rather than in the 1998 Act. However, what distinguishes this matter from the general prisoner release regime is that the State party committed itself, by an international agreement, to release a specific category of prisoners and then, by legislative and administrative action, established the criteria and a defined procedure for doing so. The State party itself confirmed that "the enabling provisions of the 1998 Act allow a Minister to deem a person to be a "qualifying prisoner"."

6.3 According to the authors, a special procedure was established for dealing with applications under the GFA early release scheme, the benefit of which was denied to the authors. The existence of this procedure is confirmed in at least three cases considered by the State party's courts.<sup>9</sup> In these cases, the applicants for early release were afforded an opportunity to make representations before a negative decision was taken. In one of these cases, O'Shea v. Ireland, the Government and the Attorney General, Mr. Kenny of the Prisons Division of the Minister's Department stated in an Affidavit that: "It is clear that there was a procedure in place for determination of applications of this nature. It is also clear

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<sup>8</sup> Case no. No. 819/1998, Views adopted on 4 April 2001.

<sup>9</sup> Desmond O'Hare -v- the Justice Minister, Equality and Law Reform and Ireland and the Attorney General, No. 513JR/2000, Henry Doherty -v- the Governor of Portlaoise Prison and others, [2000] IEHC107 and [2002] IESC8, O'Shea v. Ireland, the Government and the Attorney General, 418JR/1999.

that this procedure has been put in train and that the applicant has been treated as having made an application under the 1998 Act". According to the authors, the existence of a procedure distinguishes the GFA early release scheme from the issue that arose in the case of Connecticut Board of Pardons -v- Dumschat, which concerned general applications for parole. In addition, the authors point out that the US Court's approach in Dumschat differs markedly from that of the European Court and Commission of Human Rights, which is closely related to the Covenant.<sup>10</sup>

6.4 As to the State party's argument that the authors and others convicted with them were specifically excluded from the early release scheme by a series of Government pronouncements concerning them, the authors recall that the second named author was not convicted of the killing of Garda McCabe nor convicted "in connection with this murder." He was convicted of conspiracy to commit robbery and it was not alleged that he was even in the location of the murder at the time in question. The 1998 Act was couched in general terms and contained no provision excluding the authors or other persons who might be convicted in connection with the murder of Garda McCabe or the events in Adare. If it was (as is asserted) the Government's intention that such persons should be specifically excluded from the early release scheme, for which *prima facie* they fulfilled all the criteria, an express exception to that effect could have been inserted into the legislation, especially since, under Irish law, what is said by Government Ministers in parliament or elsewhere is not admissible for the purpose of interpreting legislation. In the circumstances, the pronouncements by the Minister and similar comments by the Prime Minister (An Taoiseach) had only the standing of opinions or interpretations of the early release scheme and the 1998 Act. Once the scheme was operative, it was for the Minister to administer it in accordance with the criteria laid down, and for the Courts to interpret it in case of dispute. It would not be unusual for Courts to interpret legislation differently from and sometimes in a manner contradictory to what the Government may assert. In the authors' view, it was quite improper for the Minister to repeatedly prejudge the position in relation to them, whose applications under the scheme he would, in due course, have to consider.

6.5 The authors clarify that their claim under article 9, paragraph 1, of the Covenant is dependent upon a finding that they were improperly discriminated against in being denied access to the early release scheme, and that they were not afforded a proper procedure for determining their entitlement to benefit from the scheme. In addition, the Minister had publicly pre-judged their applications and they were denied access to an alternative decision-maker who would employ fair procedures in determining their entitlement or reviewing the Minister's refusal.<sup>11</sup> In the authors' view, the Committee's Views in Von Alphen -v- the Netherlands<sup>12</sup>, also referred to by the State party (para. 4.7) support the view that a detention, which was initially lawful, can become arbitrary due to a subsequent breach of the authors'

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<sup>10</sup> The authors refer to the case of Grice v. The United Kingdom, Application No. 22564/93, 14 April 1994, Webster v. The United Kingdom, Application No. 12118/86, 4 March 1987, and Weeks v. The United Kingdom (9787) [1987] ECHR.

<sup>11</sup> The authors refer to Grice v. The United Kingdom, *supra*, Weeks v. The United Kingdom, *supra*, R v. Parole Board ex parte Smith and R v. Parole Board ex parte West [2005] UKHL1, 27 January 2005, where the United Kingdom House of Lords, applying Article 5.4 of the European Convention, held that prisoners contesting revocation of their release on licence were entitled to fair procedures which could, where appropriate, include an oral hearing.

<sup>12</sup> *Supra*, Note 18.

rights. According to the authors, their claim under article 14, paragraph 1, is not, as suggested by the State party, a complaint primarily about the outcome of their case, nor does it request the Committee to act as a fourth instance over Irish Courts. Instead, it complains about the procedure in the domestic courts which led to the finding against the authors. The authors argue that this is not inconsistent with the Committee's Views cited by the State party (para. 4.8).

6.6 As to the references in the State party's submission on the merits to further political developments, the authors reiterate that such information is irrelevant. This information included developments which occurred many years after the imprisonment of the first named author, who has been in custody since 1996, and the second named author, who was imprisoned between 1999 and 2003. The authors had no involvement in these later events and the inclusion of references to a major bank robbery in Belfast in December 2004, is both irrelevant and highly prejudicial. As to the argument that this case was a unique incident in the history of the Northern Ireland conflict, the authors submit that none of the factors listed by the State party were unique, and the authors set out in their pleadings in the domestic courts details of a number of other persons convicted of very similar and equally grave offences who were granted early release. Moreover, this argument was not put to the domestic courts and is not sustainable. The effects of the Northern Ireland conflict over many years resulted in many brutal killings and a number of the persons responsible for those killings have been released by the Minister under the GFA. The authors confirm the State party's argument, that no-one else has been convicted of the killing of a Garda related to the Northern Ireland conflict since the IRA ceasefire in 1994, but dismiss this argument as irrelevant. The Minister's criteria for qualifying prisoners did not set different qualifying dates for different types of offences.

## **Issues and proceedings before the Committee**

### **Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the claim is admissible under the Optional Protocol to the Covenant.

7.2 As required under article 5, paragraph 2(a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's general argument that the decision to exclude the authors (and those involved in the incident in which Garda McCabe was murdered) from the early release scheme was based on political concerns, at a critical time in the Northern Ireland peace process, and for this reason it would be inappropriate for the Committee to consider the communication. The Committee considers that its competence to consider individual communications is not affected by ongoing political negotiations in a State party or between States parties. It also notes that the State party's own Courts judicially reviewed the executive's decision and the political nature of the challenged decision does not appear to have been at issue. Indeed, the Supreme Court itself found that the Minister's power to release, although discretionary, must be exercised in good faith and not in an arbitrary, capricious or irrational manner. Thus, the Committee considers that it is not precluded from considering the communication on this ground.

7.4 The Committee considers that the other arguments advanced by the State party, that the claims are outside the scope of the Covenant, are inherently arguments relating to the substance of the communication and thus should be more appropriately dealt with under the merits. As the Committee finds no other reason to consider the claims raised by the authors inadmissible, it proceeds with its consideration on the merits.

### **Consideration of the merits**

8.1 The Human Rights Committee has considered the present communication in light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee relies upon the following facts on the basis of which it will consider the authors' claims. A statutory-based scheme for the early release of prisoners was set up pursuant to the Multi-Party Agreement of the GFA and was implemented in the Criminal Justice (Release of Prisoners) Act, 1998. The Multi-Party Agreement is a political agreement. It is undisputed that neither the GFA nor the Criminal Justice (Release of Prisoners) Act, 1998, which implemented the Agreement, conferred a general right of release on prisoners. It is also undisputed that, although the 1998 Act does not purport to confer any additional power of commutation or remission of sentence on the Minister, the Act empowers him/her to deem a person to be a "qualifying prisoner". The criteria upon which the Minister was empowered to specify prisoners as "qualifying" were not incorporated in the Act but, and this is uncontested by the State party, it appears that certain criteria were established by the Minister to assess whether a prisoner should be so specified. From the State party's point of view, the criteria established and applied by the Minister were not relevant to the circumstances of this case, as it was never intended to consider the authors under the scheme.

8.3 The authors claim that the Minister for Justice, Equality and Law Reform's refusal to specify them as "qualifying prisoners" under the scheme for the early release of prisoners, pursuant to the GFA, was arbitrary and discriminatory. The Committee considers that under article 26, States parties are bound, in their legislative, judicial and executive action, to ensure that everyone is treated equally and without discrimination based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It recalls its constant jurisprudence that not every distinction constitutes discrimination, in violation of article 26, but that distinctions must be justified on reasonable and objective grounds, in pursuit of an aim that is legitimate under the Covenant<sup>13</sup>. As regards the prohibition of discrimination, the Committee notes that the distinction made by the State party between the authors and those prisoners who had been included in the early release scheme is not based on any of the grounds listed in Article 26. In particular, the authors were not excluded because of their political opinions. However, article 26 not only prohibits discrimination but also embodies the guarantee of equality before the law and equal protection of the law.

8.4 The Committee observes that it was pursuant to the Multi-party Agreement - a political agreement - that the Release of Prisoners' Scheme was enacted, and considers that it cannot examine this case outside its political context. It notes that the early release scheme did not

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<sup>13</sup> Love v Australia, Case no. 24/1977, Views adopted on 30 July 1982, Tesdale v. Trinidad and Tobago, Case no. 677/1996, Views adopted on 1 April 2002, Kavanagh v. Ireland, *supra*.



create any entitlement to early release but left it to the discretion of the relevant authorities to decide, in the individual case, whether the person concerned should benefit from the scheme. It considers that this discretion is very wide and that, therefore, the mere fact that other prisoners in similar circumstances were released does not automatically amount to a violation of article 26. The Committee notes that the State party justifies the exclusion of the authors (and others involved in the incident in which Garda McCabe was murdered) from the scheme, by reason of the combined circumstances of the incident in question, its timing (in the context of a breach of a cease-fire), its brutality, and the need to ensure public support for the GFA. In 1996 when the incident occurred, the government assessed the impact of the incident as exceptional. For this reason, it considered that all those involved would be excluded from any subsequent agreement on the release of prisoners. This decision was taken after the incident in question but before the conviction of those responsible, and thus, focused on the impact of the incident itself rather than on the individuals involved. All those responsible were made aware, from the outset, that if they were convicted of having had any involvement in the incident, they would be excluded from the scheme. The Committee also notes that, apparently, others convicted of killing Gardai who benefited from the early release scheme had already served long sentences (see para. 2.10). The Committee considers that it is not in a position to substitute the State party's assessment of facts with its own views, particularly with respect to a decision that was made nearly ten years ago, in a political context, and leading up to a peace agreement. It finds that the material in front of it does not disclose arbitrariness and concludes that the authors' rights under article 26 to equality before the law and to the equal protection of the law have not been violated.

8.5 As regards the authors' claims that their continuing detention violated article 9 paragraph 1 of the Covenant, the Committee finds that in light of the finding above (paragraph 8.4), such detention did not amount to arbitrary detention.

8.6 Finally, the authors claim that they were denied an effective remedy, under article 2, paragraph 3 and suffered from a violation of article 14, paragraph 1 of the Covenant, because the State party's courts failed to protect them against discrimination in the operation of the early release scheme, there was no avenue of redress after the Supreme Court had rejected their appeal on clearly erroneous grounds, and failed to afford them fair procedures during the hearing of their appeal and the consideration of their application to set aside the Court's decision. The Committee notes that the authors had full access to the courts of their country, and that the Supreme Court considered this matter on two occasions. Although it would now appear that the Court's decision was based on erroneous facts, on reviewing its decision on 1 April 2004, the Supreme Court found that the parties had agreed upon the facts in issue, thereby sustaining its prior decision. Thus, the Committee concludes that these decisions do not reveal any arbitrariness, and therefore finds that articles 2 and 14 of the Covenant have not been violated in the present case.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any articles of the Covenant.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## APPENDIX

### Dissenting Opinion by Committee member Mr. Hipólito Solari-Yrigoyen

I disagree with the majority view in the following particulars:

1. In regarding the Good Friday Agreement as a “political agreement” which it “cannot examine ... outside its political context”, the Committee gives undue weight to the State party’s claim that it based its decision not to include the authors in the early release scheme on the exceptional impact and repercussions of the offence [of which they were convicted] on public opinion. The State party asserts that the offences in question “caused outrage”, that the Government did not believe the Irish people would tolerate the early release of the authors, and that when the Prime Minister announced in Parliament that he would consider their early release, his statement provoked “strong public criticism”.
2. It seems perverse that, according to the majority position during the discussion of the case in its political context, the authors’ political opinions are to be described as real or “alleged” when the State party has explicitly acknowledged that high-ranking members of the Provisional IRA were involved, and when unchallenged evidence made available to the Committee shows that the offences of which the authors were found guilty were committed in the name of the Provisional Irish Republican Army, that the prison authorities and the Department of Justice acknowledged that the authors belonged to the Provisional IRA, and that as such the authors were confined in a special wing of the prison intended for IRA members. The Supreme Court also found that the authors were undeniably members of the Provisional IRA. There is nothing “alleged” about the authors’ political opinions.
3. Whether the Good Friday Agreement was political or not, the crucial issue for the Committee should be to ascertain whether the exclusion of the authors from the early release scheme was consistent with article 26 of the Covenant, which calls for equality before the law and prohibits discrimination on the grounds which it specifies. Even if the early release scheme left it to the discretion of the authorities to include or exclude a particular individual, a decision to exclude someone ought to be based on fair and reasonable criteria - something which the State party has not so much as attempted to do.
4. The authors point out that the State party included under the scheme people guilty of crimes as serious as or more serious than those which they committed, such as killing policemen, a crime attracting the death penalty until 1990 and punishable thereafter by a mandatory minimum 40-year prison sentence. They also report that a Department of Justice document made available to them which discussed the prison terms that should be served by prisoners found guilty after 10 April 1998 of crimes committed before the Good Friday Agreement (the authors’ case) expressly excluded them. The State party has confirmed that the authors were repeatedly excluded from the early release scheme and that “on successive occasions members of the ... Government made public pronouncements to this effect” (para. 4.2). Hence the State party has deliberately treated the authors differently from other people convicted of crimes similar to or more serious than those the authors committed.
5. Given that one of the authors was convicted of manslaughter (in the *Garda McCabe* case) and the other of conspiracy to commit robbery although he had not even been at the scene of the crime, one must conclude that the State party has not shown that its decision to exclude the authors from the early release scheme was based on fair and reasonable grounds.

The decision was based on political and other considerations unacceptable under the Covenant such as the potential impact of the authors' early release on public opinion. As the Committee has pointed out in general comment 18, article 26 of the Covenant does not merely duplicate the guarantee offered by article 2 but provides an autonomous right prohibiting discrimination in law or in fact in any field regulated and protected by public authorities.

6. I therefore consider that the authors' right under article 26 of the Covenant to equality before the law and equal protection of the law without discrimination of any kind has been violated.

[*Signed*]: Hipólito Solari-Yrigoyen

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

### **Concurring opinion of Committee member Ms. Ruth Wedgwood**

The Committee has properly concluded that the State party did not act in an arbitrary fashion when it declined to release the two authors from prison under the Good Friday Agreement. The authors were involved in a robbery which led to the shooting death of an Irish police officer in June 1996. This violent crime contributed to the breach of a two-year ceasefire declared in August 1994, and helped to bring more than another year of fighting in a bitter civil conflict. Any alleged misapprehension of the facts of the authors' case by the Supreme Court of Ireland was cured in a petition for consideration and government affidavit submitted to the Court. See Views of the Committee, paragraph 2.16 supra. In full possession of these facts, the Supreme Court reaffirmed its prior holding.

There is one cautionary note that properly attends our consideration of this case. Article 26 of the Covenant provides that all persons are equal before the law, and are entitled to equal protection of the law. Article 26 also forbids discrimination on "any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." But Article 26 does not allow the Committee to sit as an administrative court, reviewing every government decision, in the same fashion as a national administrative tribunal. This is a point especially important in the management of our decisional capacity under the First Optional Protocol.

The authors' complaint alleges that the Justice Minister of Ireland failed to write them with reasons for their exclusion from "qualifying prisoners" for potential release. They also ask the Committee to disallow the Minister's underlying reasons as arbitrary and inadequate, because other prisoners who were released had allegedly committed crimes as equally grave as their own. But the Supreme Court of Ireland noted that the Good Friday Agreement had not been incorporated into Irish law and was not designed to confer specific rights on individuals. In a great many countries, pardon authority remains a discretionary exercise, for which the Executive is not required to give reasons. There is no allegation here that any of the specific characteristics named in Article 26 affected the government's decision, nor any other identity-related characteristic. Thus, there is no apparent basis for the authors' claim under Article 26.

[Signed]: Ruth Wedgwood

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

**Individual Opinion by Committee members Mr. Rajsoomer Lallah  
and Ms. Christine Chanet**

1. I am unable to share the majority view that Article 26 has not been violated. In my view, those provisions of the Article prescribing the fundamental principles of equality before the law and the equal protection of the law have been violated.
2. While it is true to say that the actual exercise of power to release prisoners earlier than their term of imprisonment was contained in existing law which applied generally to all prisoners, nevertheless the 1998 Act which was designed to implement the GFA, in its specific application to prisoners, created a special scheme and the special mechanism of an advisory Commission to consider the early release of “qualifying prisoners” (*vide paragraphs 2.6 and 2.7 of the Committee Views for the background and meaning of this term*).
3. The 1998 Act thus created, for the purpose of the exercise of the early release provisions, a special category of prisoners a list of whom the relevant Minister was statutorily empowered to refer to the Commission for advice.
4. I open a parenthesis here to observe that the question whether the Minister would or would not be bound by that advice is not relevant, though it could reasonably be assumed that such Commissions are created for a genuine purpose, are not otiose statutory creations and are not unlike Commissions on the Prerogative of Mercy in a number of modern Constitutions by whose advice the Executive is bound. Clearly the purpose is precisely to shield decisions affecting the liberty of individuals from political expediency and to ensure, in this regard, the observance of the principles of equality and equal protection of the law.
5. Be that as it may and at a minimum, the 1998 Act created a special category of “qualifying prisoners”, as distinct from the general category of prisoners, to be entitled to inclusion in the Ministerial list and to have their cases considered by the statutory Commission. While Article 26 permits, in principle, different treatment between several claimants on reasonable and objective criteria, such criteria cease to be reasonable and objective when they are based on essentially political considerations expressly prohibited by Article 26, whether in the enactment of laws or in their implementation or else in their judicial adjudication. The authors were thus deprived of their entitlement to inclusion in the list in violation of their Article 26 right, as “qualifying prisoners”, to equality of treatment and the equal protection of the law.

[Signed] Rajsoomer Lallah

[Signed] Christine Chanet

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

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