

## NATIONAL ARCHIVES

### IRELAND



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**Title:** Typescript copy letter addressed to Patrick Donegan, TD, Minister for Defence by the President of Ireland, Cearbhall Ó Dálaigh, explaining the role and powers of the President under the Constitution in relation to the Defence Forces and the reference of Bills to the Supreme Supreme Court to test their constitutionality

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BAILE ÁTHA CLIATH 8  
DUBLIN

19ú Deireadh Fómhair, 1976.

A Aire Uasail,

I received your letter of to-day's date this evening at 5.45.

I

The Constitution vests the supreme command of the Defence Forces in the President, and all commissioned officers, on the Government's nomination, hold their commissions from the President.

The exercise of the supreme command, the Constitution directs, is to be regulated by law; and the formula of section 17(1) of the Defence Act, 1954, is as follows:-

"Under the direction of the President, and subject to the provisions of this Act, the military command of, and all executive and administrative powers in relation to, the Defence Forces, including the power to delegate command and authority, shall be exercisable by the Government and, subject to such exceptions and limitations as the Government may from time to time determine, through and by the Minister (for Defence)".

The President's rôle in relation to the Defence Forces is therefore honorary in character: nevertheless a special relationship exists between the President and the Minister for Defence. That relationship has been irreparably breached not only by what you said yesterday but also because of the place where, and the persons before whom, you chose to make your outrageous criticism: I adopt this term from to-day's leading article in the "Irish Times".

The gravamen of your utterance is, "in my opinion he (the President) is a thundering disgrace". These words, I find, are followed by the

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sentence: "The fact is, the Army must stand behind the State". Can this sequence be construed by ordinary people otherwise than as an insinuation that the President does not stand behind the State? Have you any conception of your responsibilities as a Minister of State and, in particular, as Minister for Defence?

## II

In relation to the reference of Bills to the Supreme Court for a decision as to whether they are repugnant to the Constitution, article 26 of the Constitution expressly authorises the President, after consultation with the Council of State, to exercise this power. The President may refer any Bill, with three specified exceptions. It has never been suggested that the Emergency Powers Bill fell into any of the excepted categories: quite the contrary.

If the office of President, as I conceive it to be, is to have any usefulness, a President would be failing in his duty "to maintain the Constitution of Ireland and uphold its laws" if he were not vigilant in his scrutiny of legislative proposals.

I cannot accept that what you had to say about the 'non-reference' by me of the Criminal Law Bill was not intended to be a reflection upon my office.

Your speech shows no understanding of the difference between the "non-reference" of the Criminal Law Bill and the "reference" of the Emergency Powers Bill. The sections of the Criminal Law Bill which I specifically mentioned in the summons to the Council of State - section 3 and section 15(6) - are still open to constitutional scrutiny by the Courts in the ordinary way, notwithstanding that the Bill is now law.

The serious constitutional question which arose in respect of the Emergency Powers Bill was, whether the mere invocation of the formula

/specified

specified in article 28(3)(3) of the Constitution put all matters, including the question of the existence of a national emergency, affecting the vital interests of the State, beyond scrutiny by the Courts. The Supreme Court has dealt with that matter and other important topics in its judgment.

Is mise,

*Lawrence S. Stagh*

An tUasal Patrick S. Donegan, T.D.,  
Aire Cosanta.