

# NATIONAL ARCHIVES

## IRELAND



<b>Reference Code:</b>	2012/90/976
<b>Creation Date(s):</b>	7-10 December 1982
<b>Extent and medium:</b>	10 pages
<b>Creator(s):</b>	Department of the Taoiseach
<b>Access Conditions:</b>	Open
<b>Copyright:</b>	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

Mr. Neligan

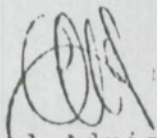
Herewith copy of the judgment of the Supreme Court in the McGlinchey case. It is in fact no more informative than the newspaper reports and I do not wish therefore to alter my opinion other than to note that it is now clear that Counsel for the appellant did concede specifically that the offence was not a political offence.

I also have a copy of the transcript of Peter Sutherland's interview with John Bowman. He as you are aware thinks the judgment extremely significant even though he acknowledges the Court's assertion that each case must be dealt with on the specific facts.

He stresses the fact that the Courts will from now on be expected to look not only at the motive but at the nature of the crime and should be guided by what reasonable civilised people consider to be a political activity. Again this emphasises that each case must be considered on its merits.

I cannot quite agree with him that it shows a recognition by the Courts that a distinction may need to be made between a terrorist offence and a political offence although it does in my view certainly imply that the former should not be considered to be a political offence ab initio.

I think its significance will only be seen when, and by the manner in which further decisions of the Courts take these supreme <sup>Council</sup> guidelines into account.

  
Legal Adviser

10 December 1982

THE SUPREME COURT

Henchy J.  
Griffin J.

McGLINCHEY

v.

WREN

---

(149-82)

JUDGMENT delivered the 7th day of December 1982 by  
O'HIGGINS C.J.

On the 2nd February 1982 Dominic McGlinchey, the Plaintiff herein, was brought before District Justice Mahon, a Justice of the District Court, on a warrant for his arrest issued by a judicial authority in Northern Ireland, on a complaint that on the 28th March 1977 at Toomebridge in the County of Antrim, he had murdered Mrs. Hester McMullan. This warrant had been endorsed for execution pursuant to section 43 of the Extradition Act 1965 (the Act) by the Defendant Laurence Wren, Deputy Commissioner of the Garda Siochana. The District Justice on that day made an Order pursuant to section 47 of the Act that the Plaintiff be delivered by Carrickarnon, Co. Louth, into the custody of a member of the Royal Ulster Constabulary, but as is required by the Act, he



allowed the statutory period of fifteen days to enable the Plaintiff to make an application pursuant to the provisions of section 48 of the Act.

The case made in High Court

On the 9th February 1982 a Special Summons was issued in the High Court on behalf of the Plaintiff seeking his release pursuant to section 50 of the Act. In the affidavit grounding his claim the Plaintiff swore that the offence referred to in the warrant was a political offence or an offence connected with a political offence. He also asserted his belief that if removed from the State pursuant to the warrant he would be prosecuted or detained for a political offence or an offence connected with a political offence. He stated further that at the time of the murder in respect of which his delivery was sought he "was engaged in activities in Northern Ireland on behalf of the Provisional Irish Republican Army and that responsibility for the offence referred to in the said warrant was claimed by the said organisation". He exhibited an excerpt from a copy of the "Ballymena



Guardian" containing an account of the murder and setting out a press release, by the organisation referred to, claiming responsibility for the murder, a copy of a "wanted" poster which referred to him, a further article in the "Ballymena Guardian" referring to wanted men, in which he was named, and a charge sheet preferred against one Thomas Oliver Mawhinney in respect of the offence of withholding information in relation to his, the Plaintiff's, involvement in terrorist activities, including the murder of one David McQuillan. The Special Summons came on for hearing before Mr. Justice Gannon in the High Court on the 17th May 1982. He refused the order for release sought. Against this refusal this appeal has been brought by the Plaintiff.

Procedure under the Act

The procedure which led to the Plaintiff's arrest and to the lodging of the claim now under consideration in this appeal is provided for in Part III of the Act which Part (ss. 41 to 45) applies to Northern Ireland, England and Wales, Scotland, The Isle of Man and the



Channel Islands. Section 50(2) under which a direction for the release of a person ordered to be detained and delivered over under section 47 may be made by the Court, is in the following terms:

- "(2) A direction under this section may be given by the High Court where the Court is of opinion that -
- (a) the offence to which the warrant relates is -
    - (i) a political offence or an offence connected with a political offence, or
    - (ii) an offence under military law which is an offence under ordinary criminal law, or
    - (iii) a revenue offence, or
  - (b) there are substantial reasons for believing that the person named or described in the warrant will, if removed from the State under this Part, be prosecuted and detained for a political offence or an offence connected with a political offence under military law which is not an offence under ordinary criminal law, or
  - (c) the offence specified in the warrant does not correspond with any offence under the law of the State which is an indictable offence or is punishable on summary conviction by imprisonment for a maximum period of at least six months."

The Act does not define the term "political offence" and the Court must form an opinion on the facts of each particular case whether the offence in question can

properly be so described.

The offence and the victim

It appears from the material exhibited in the Plaintiff's affidavit that the victim of the murder for which delivery to Northern Ireland is sought was an elderly grandmother. She was riddled with bullets in the early hours of the morning, when her house was attacked, front and rear, by a gang firing Armalite rifles from a moving car. Other members of her family including her aged husband and a daughter narrowly escaped death. This revolting and cowardly crime is one which should readily shock the conscience of any normal person and which assuredly dishonours any cause that might have been espoused by its perpetrators. In the High Court the Plaintiff sought to justify his claim for release by describing this murder as a political offence and (while not denying his personal involvement) by attributing primary responsibility for it to the Provisional IRA in which he was then active. This plea has been expressly abandoned in this Court and it is now conceded by his



- 6 -

Counsel that this murder could not be regarded as a political offence or an offence connected with a political offence.

Because of the particular circumstances of the offence charged in the warrant, and especially because of the concessions made on behalf of the Plaintiff, it is unnecessary to seek to draw a line of demarcation between an ordinary criminal offence and one which falls to be classified as a political offence or an offence connected with a political offence. I would wish to point out, however, that it should not be deduced that if the victim were someone other than a civilian who was killed or injured as a result of violent criminal conduct chosen in lieu of what would fall directly or indirectly within the ordinary scope of political activity, the offence would necessarily be classified as a political offence or an offence connected with a political offence. The judicial authorities on the scope of such offences have in many respects been rendered obsolete by the fact that modern terrorist violence, whether undertaken by military or paramilitary organisations, or by



- 7 -

individuals or groups of individuals, is often the antithesis of what could reasonably be regarded as political, either in itself or in its connections. All that can be said with authority in this case is that, with or without the concession made on behalf of the Plaintiff, this offence could not be said to be either a political offence or an offence connected with a political offence. Whether a contrary conclusion would be reached in different circumstances must depend on the particular circumstances and on whether those particular circumstances showed that the person charged was at the relevant time engaged, either directly or indirectly, in what reasonable, civilised people would regard as political activity.

The case made on appeal

In this Court the Plaintiff, while so conceding in respect of the offence named in the warrant, nevertheless makes the case, in reliance on section 50(2)(b) of the Act, that there are substantial grounds for believing that if removed from the State he will be prosecuted for a political offence or an offence connected with a political offence. In this respect he has made reference to the



charges brought against one Thomas Oliver Mawhinney for failure to disclose information concerning the Plaintiff's involvement in three offences. These are:

- (1) Unlawful possession of a machine gun,
- (2) Unlawful possession of three rifles, and
- (3) The murder of David McQuillan.

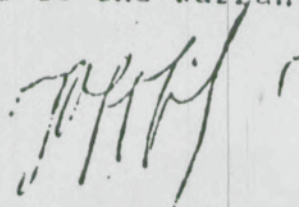
As has been already indicated, no offence, regardless of who the perpetrator or the victim may be, can be accounted a political offence or an offence connected with a political offence unless there is evidence to show that it arose, directly or indirectly, out of political activity in the sense already referred to in this judgment. No such evidence has been adduced in respect of those three offences. This Court is invited to assume that because of the existence of widespread violence organised by paramilitary groups in Northern Ireland, any charge associated with terrorist activity should be regarded as a charge in respect of a political offence or an offence connected with a political offence. I am not prepared to make any such assumption.



Onus not discharged

The excusing per se of murder, and, of offences involving violence and the infliction of human suffering, done by, or at the behest of, self-ordained arbiters, is the very antithesis of the ordinances of Christianity and civilisation and of the basic requirements of political activity. Under the Act the onus of establishing that the offence in question is either a political offence or one connected with a political offence, as a reason for not handing over a person sought on a warrant properly endorsed under Part III, is upon the person who seeks asylum in our jurisdiction. In my view this Plaintiff has singularly failed to discharge that onus.

I would dismiss this appeal by the Plaintiff against the order of the High Court dismissing his claim to be exempt from delivery pursuant to the warrant.

A handwritten signature in dark ink, appearing to be 'M. J. J.', is written in the lower right quadrant of the page.