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Judgment: approved by the Court for handing down
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Delivered: **30. 06.04**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

v

Z

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IN THE MATTER OF A REFERENCE UNDER SECTION 15 OF THE CRIMINAL APPEAL (NORTHERN IRELAND) ACT 1980

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Before: Kerr LCJ, Nicholson LJ and Campbell LJ

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KERR LCJ

Introduction

[1] On 26 May 2004 in the course of a criminal trial Girvan J ruled that the "Real" Irish Republican Army was not a proscribed organisation for the purposes of Section 3 of the Terrorism Act 2000. He duly acquitted a number of defendants who had been charged with belonging to a proscribed organisation contrary to Section 11(1) of Act of 2000. The organisation specified in the charges was the "Real" Irish Republican Army.

[2] Section 15 (1) of the Criminal Appeal (Northern Ireland) Act 1980 provides: -

> "**15 Reference of point of law following acquittal on indictment**
>
> (1) Where a person tried on indictment has been acquitted (whether in respect of the whole or part

> of the indictment) the Attorney General for Northern Ireland may, if he desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to the Court, and the Court shall, in accordance with this section, consider the point and give the Court's opinion on it."

[3] Acting under this provision the Attorney General referred the following question to this court for its opinion: -

> "Does a person commit an offence contrary to section 11(1) of the Terrorism Act 2000 if he belongs or professes to belong to the "Real" Irish Republican Army?"

The history of proscription

[4] Proscription has been used for over eighty years to outlaw organisations involved in terrorism connected with the affairs of Northern Ireland. Regulation 24A of regulations made under the Civil Authorities (Special Powers) Act (Northern Ireland) 1922 made it a criminal offence to become or remain a member of an organisation named in it as an "unlawful organisation", or to do anything to promote its objects. The organisations listed in the Regulation were those which advocated the use of violence for political ends. Among others, they included the Irish Republican Army.

[5] The modern law of proscription dates back to 1972, when Lord Diplock was asked to consider what arrangements for the administration of justice in Northern Ireland could be made to deal more effectively with terrorist organisations by bringing to account individuals involved in terrorist activities. The Diplock Report ("*Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland*" (Cmnd. 5185)) led to the enactment of the Northern Ireland (Emergency Provisions) Act 1973. Section 19 empowered the Secretary of State to proscribe "any organisation that appears to him to be concerned in terrorism or in promoting or encouraging it." The 1973 Act, which applied to Northern Ireland, was followed by the Prevention of Terrorism (Temporary Provisions) Act 1974, which applied to Great Britain. The power to proscribe organisations was then re-enacted in subsequent legislation:

(i) Prevention of Terrorism (Temporary Provisions) Act 1976
(ii) Northern Ireland (Emergency Provisions) Act 1978
(iii) Prevention of Terrorism (Temporary Provisions) Act 1984
(iv) Prevention of Terrorism (Temporary Provisions) Act 1989
(v) Northern Ireland (Emergency Provisions) Act 1991

(vi) Northern Ireland (Emergency Provisions) Act 1996.

[6] It was a feature of all these items of legislation that proscription extended beyond those organisations named. Other groups 'passing under the name of' an organisation named were also proscribed. Thus, section 19 (3) of the 1973 Act provided: -

> "The organisations specified in Schedule 2 to this Act are proscribed organisations ... and any organisation which passes under a name mentioned in that Schedule shall be treated as proscribed, whatever relationship (if any) it has to any other organisation of the same name."

This formula was repeated in all subsequent legislation up to and including the 1996 Act.

The Terrorism Act 2000

[7] The 2000 Act followed Lord Lloyd's *Inquiry into legislation against terrorism*, October 1996 (Cm. 3420 (1996)) and the Government's consultation document, *Legislation Against Terrorism* (Cm. 4178). It was intended to reform the law relating to terrorist crime.

[8] The proscription regime established by the 2000 Act largely followed the model of earlier legislation. A number of significant changes were introduced, some of which were of a general nature, others specific. Among the general differences were first, proscription could be applied throughout the United Kingdom under the 2000 Act in contrast to the separate proscription regimes for Great Britain and Northern Ireland that had hitherto existed. Secondly, whereas under the earlier legislation proscription was applicable only to terrorism connected with the affairs of Northern Ireland, under the 2000 Act the Secretary of State could proscribe organisations concerned in international or domestic terrorism as well as terrorism connected with the affairs of Northern Ireland.

[9] Section 11 (1) makes it an offence to belong or profess to belong to a proscribed organisation. Section 3 (1) defines a proscribed organisation as follows: -

> "**3.**- (1) For the purposes of this Act an organisation is proscribed if –
>
> (a) it is listed in Schedule 2, or

> (b) it operates under the same name as an organisation listed in that Schedule."

Therefore, whereas before the formula used to extend proscription to organisations other than those specified was 'passes under a name mentioned' in the Schedule, now the legislative means of achieving proscription of organisations other than those listed is the phrase, 'operates under the same name as an organisation listed'.

[10] Schedule 2 lists a number of organisations, the first of which is the Irish Republican Army. The other organisations named include Cumann na mBan, Fianna na hEireann, Saor Eire, The Irish National Liberation Army, The Irish People's Liberation Organisation and The Continuity Army Council, all of which would be associated with republican aspirations. A number of loyalist organisations are also named as well as several international terrorist groups.

[11] Section 108 of the Act contains provisions relating to evidence that may be given on the committal or trial of a person charged with an offence under section 11. So far as material it provides: -

> "**108.** - (1) This section applies where a person is charged with an offence under section 11.
>
> (2) Subsection (3) applies where a police officer of at least the rank of superintendent states in oral evidence that in his opinion the accused-
>
> > (a) belongs to an organisation which is specified, or
> >
> > (b) belonged to an organisation at a time when it was specified.
>
> (3) Where this subsection applies-
>
> > (a) the statement shall be admissible as evidence of the matter stated, but
> >
> > (b) the accused shall not be committed for trial, be found to have a case to answer or be convicted solely on the basis of the statement."

[12] Section 108 permits evidence of opinion from a police officer that a person charged with an offence under section 11 is or was a member of a

'specified' organisation. A specified organisation for this purpose is defined in section 107 as follows: -

> "**107.** For the purposes of sections 108 to 111 an organisation is specified at a particular time if at that time-
>
> (a) it is specified under section 3(8) of the Northern Ireland (Sentences) Act 1998, and
>
> (b) it is, or forms part of, an organisation which is proscribed for the purposes of this Act."

For evidence under section 108 to be admissible therefore, the police officer must hold the opinion that the person charged belonged to an organisation that was not only proscribed under the 2000 Act but was also specified under section 3 (8) of the 1998 Act.

The Northern Ireland (Sentences) Act 1998

[13] Under the Multi-Party Agreement made on 10 April 1998 (Cm. 3883 (1998)), commonly known as the Good Friday Agreement, the governments of the United Kingdom and the Republic of Ireland agreed to establish a scheme of accelerated release for prisoners convicted of certain terrorist offences. Members of those organisations that had not established and maintained a ceasefire were to be excluded from the scheme and this was achieved by giving the Secretary of State power to specify such organisations.

[14] The Northern Ireland (Sentences) Act 1998 was passed to give effect in Northern Ireland to the agreement to introduce the accelerated release scheme. In order to be eligible to apply for a declaration of eligibility for release a prisoner had to satisfy a number of conditions one of which was that he was not a supporter of a specified organisation – section 3 (4). A specified organisation was defined in section 3 (8) which provides: -

> "(8) A specified organisation is an organisation specified by order of the Secretary of State; and he shall specify any organisation which he believes-
>
> (a) is concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and
>
> (b) has not established or is not maintaining a complete and unequivocal ceasefire."

[15] The latest order made by Secretary of State under section 3 (8) is the Northern Ireland (Sentences) Act 1998 (Specified Organisations) Order 2001 on 12 October 2001. The "Real" IRA is among the organisations specified as being 'concerned in terrorism connected with the affairs of Northern Ireland, or in promoting or encouraging it, and that they have not established or are not maintaining a complete and unequivocal ceasefire'.

The trial judge's ruling

[16] Girvan J found that the "Real" Irish Republican Army was a different organisation from the Irish Republican Army named in the second Schedule to the 2000 Act. At paragraph 6 of his ruling he said: -

> "…The Real Irish Republican Army is identified by the State under the 1998 Act as a separate and distinct organisation whose adherents in the eyes of the law merit different treatment from members of the Irish Republican Army who signed up to a ceasefire …"

[17] The learned judge then discussed how the question whether the "Real" Irish Republican Army operated under the same name as the organisation listed in Schedule 2 was to be addressed: -

> "Section 3(b) (*sic*) requires us to focus on the question whether the organisation of which the accused is an alleged member *operates as an organisation* under the name specified in the Schedule." (original emphasis)

This approach transposes the words 'under the same name' to a position after the word 'organisation' and, as we shall discuss below, has the potential to change the sense of the subsection.

[18] Following this approach the judge then considered the nature of the organisation that is the "Real" IRA. In paragraph 7 of his ruling he said: -

> "In the case of a legal organisation membership is based on the concept of a contract between members to participate in the organisation in accordance with its constitution, express or implied. The concept of an organisation involves membership, a common purpose or purposes and a degree of direction for the fulfilment of those common purposes. In the case of an illegal organisation public policy would preclude any contractual enforcement of rights or obligations as

> between the members, but to see whether a collection of people constitute members of an organisation one must still need to see a common purpose and a degree of direction or organisation showing that that collection of persons are part of a common unlawful enterprise. The analogy is with the common law conspiracy. The members of the Real Irish Republican Army have currently a programme and purpose which differs from that of the members of the Irish Republican Army, this being the premise of the description of the Real Irish Republican Army as a separate organisation under the 1998 Act."

It is clear from this passage that the judge believed it relevant to examine the activities of the "Real" Irish Republican Army in order to see whether it came within the category outlined in section 3 (1) (b). We will have to consider whether this is a correct approach or whether, as has been urged by the Attorney General, one should concentrate on the 'label' that the organisation attaches to itself in deciding whether it operates under the same name as the Irish Republican Army.

[19] Finally the judge distinguished the activities of members of the "Real" Irish Republican Army from those who belonged to the organisation listed in Schedule 2 in the following paragraph: -

> "[8] A way of testing the point is to consider the situation of an individual who after the ceasefire has decided to involve himself in a programme of continued republican violence contrary to the ceasefire and links himself to the group known as the Real Irish Republican Army. It would be difficult to see how that person could be said to have become a member of the Irish Republican Army as an organisation. He may have become a member of the Real Irish Republican Army. He may see himself as continuing the traditions of the Irish Republican Army. He may see the organisation of which he is an adherent as the genuine article, but the organisation to which he belongs is not the same organisation to which others are subscribing because they are pursuing a different course of criminal activity."

In this part of his ruling the judge appears to be considering whether a member of the "Real" Irish Republican Army could be said to be a member of

the organisation that is listed in the Schedule. This discussion is relevant to section 3 (1) (a) (whether the "Real" Irish Republican Army is the organisation listed in the Schedule) although the judge introduced it as a means of 'testing the point', presumably a reference to the point in the preceding paragraph which appeared to be a discussion of whether the "Real" Irish Republican Army was an organisation operating under the name the Irish Republican Army for the purposes of section 3 (1) (b).

The arguments

[20] The Attorney General submitted that the name the Irish Republican Army in Schedule 2 to the 2000 Act and earlier legislation was a generic term used to describe the IRA in all its forms. It could not have been doubted, he suggested, that before the passing of the Sentences (Northern Ireland) Act 1998 the "Real" IRA was a proscribed organisation. It was inconceivable, therefore, that Parliament could have intended that it should no longer be proscribed with the coming into force of that Act, particularly since the 1998 Act provided the means for a significant sanction on the "Real" IRA in the form of exclusion from the accelerated release scheme. The "Real" IRA was the Irish Republican Army, the Attorney claimed, and it was therefore a proscribed organisation by virtue of section 3 (1) (a) of the Terrorism Act.

[21] Alternatively, he submitted that the "Real" IRA was an organisation which operated under the same name as the Irish Republican Army. It was not necessary that the name be identical to that given in the Schedule. It was enough that it incorporated the name of the organisation there listed.

[22] If the "Real" IRA was not among the proscribed groups, section 108 of the Terrorism Act would be denuded of effect in relation to that organisation, the Attorney General suggested. Again, this could never have been the intention of Parliament, he claimed. Parliament must be taken to have intended that the "Real" IRA would continue to be proscribed so as to make sure that it was included within the ambit of that provision.

[23] For the acquitted person Mr Barry Macdonald QC accepted that the "Real" IRA was certainly a terrorist organisation deserving of proscription but he suggested that the failure to ensure that they were proscribed lay squarely with the Executive. He submitted that in determining whether the "Real" IRA was a proscribed organisation two simple questions should be asked. First, was it listed in the Schedule and, second, did it have the same name as an organisation listed in the Schedule. Since the answer to these questions was, he said, plainly 'No', the "Real" IRA was not a proscribed organisation.

[24] In support of his argument that the "Real" IRA was a different organisation from the Irish Republican Army as listed in Schedule 2 to the

Act, Mr Macdonald pointed out that the organisation styled itself "Real" in order to distinguish itself from the other older organisation and the government had acknowledged that they were separate organisations by specifying the "Real" IRA, and not the Irish Republican Army under the Sentences legislation.

[25] Mr Macdonald drew attention to the definition of 'organisation' in section 121 of the 2000 Act. It is there defined as including 'any association or combination of persons'. It was clear, he said, that the "Real" IRA was an association or combination of persons that was different from the group of persons properly designated the Irish Republican Army. It was not the same organisation as any of those named in the Schedule and did not come within section 3 (1) (a).

[26] As to section 3 (1) (b), Mr Macdonald submitted that since the 2000 Act was a penal statute it must be construed strictly. The word 'same' in this subsection meant and should be construed to mean 'precisely the same'. It did not mean 'similar' or 'nearly the same as'. The "Real" Irish Republican Army was not operating under precisely the same name as the Irish Republican Army. On the contrary it had adopted a prefix in order to differentiate it from that organisation. Since it could not be said to be operating under the same name as any of the organisations listed in Schedule 2, section 3 (1) (b) was not effective to proscribe the "Real" IRA.

The Irish Republican Army

[27] The search for an answer to the question whether the "Real" IRA is proscribed by section 3 (1) (a) of the 2000 Act must begin with an examination of the meaning of 'Irish Republican Army' as it appears in Schedule 2. Is it, as the Attorney General would have it, an umbrella term, designed to cover the IRA in all its manifestations or does it, as Mr Macdonald argues, denote a particular organisation that is separate and distinct from the "Real" IRA?

[28] Something of the history of the IRA must be looked at as part of this inquiry. Judicial notice can be taken of the fact that until 1969 an organisation calling itself the Irish Republican Army existed as a cohesive unit. It had as one of its principal aims the unification of the thirty-two counties of Ireland. To achieve that aim the IRA carried out acts of violence sporadically. In or about 1969 a major split in the ranks of the IRA occurred. Some members of the organisation, claiming to be the true inheritors of the mantle of the IRA, in effect declared a ceasefire in 1972. This group became known as the Official IRA. Other members of the organisation continued to assert the right to and signalled their intention to continue to use violence to achieve the reunification of Ireland. This group became known as the Provisional IRA. The two organisations existed independently of each other thereafter.

[29] All of this is well known. And against that background successive governments continued the policy of proscription, in relation to the Official IRA and the Provisional IRA, by making it a criminal offence to belong or profess to belong to the Irish Republican Army. It is clear that the legislature considered that such a provision was efficacious to make illegal membership of either organisation.

[30] In 1994 and again in 1997 the Provisional IRA declared a ceasefire and in September 1997 Sinn Féin, its political wing, agreed to the principles devised by Senator George Mitchell (known as the 'Mitchell Principles') on democracy and non-violence as part of the ongoing peace process. Dissident groups within PIRA opposed these moves. In late 1997, one group dissociated itself from the Provisional leadership and styling itself the "Real" IRA declared that the ceasefire was over. It has since claimed responsibility for a number of violent incidents, most notoriously the bombing of Omagh in August 1998 which killed 29 people and two unborn children. Again these facts are so well known as to permit this court to take judicial notice of them.

The intention of the legislature

[31] The object in construing a statute is to ascertain the intention of Parliament as expressed in the Act. In order to do this the enactment must be considered as a whole and in its context – see *Viscountess Rhondda's Claim* [1922] 2 AC 339 at 397 and *Harrison v Lewis* [1988] 2 FLR 339 at 344.

[32] At the time of the enactment of the Terrorism Act 2000, Parliament was well aware of the existence and activities of the "Real" IRA. Quite apart from the notoriety of the outrage in Omagh in August 1998, this much is clear from the fact that the "Real" IRA was specified under the Northern Ireland (Sentences) Act 1998 before the Terrorism Act was passed. In our judgment it is inconceivable that the legislature did not intend that the "Real" IRA should be proscribed and that its members should be liable to prosecution for belonging to a proscribed organisation.

[33] Mr Macdonald did not dispute that it was the intention of Parliament that the "Real" IRA should be proscribed but he submitted that the legislation as passed was not effective to achieve that aim. Both he and the judge in his ruling relied crucially on the contention that the "Real" Irish Republican Army had been identified by the State as a 'separate and distinct' organisation under the 1998 Act from the organisation listed in Schedule 2 to the Terrorism Act 2000. The validity of that contention must depend on what is meant by 'The Irish Republican Army' in the Schedule.

[34] Given the history of proscription and in particular the fact that Parliament had frequently enacted proscription provisions designed to include both elements of the IRA (Official and Provisional) within the single

rubric 'The Irish Republican Army', we have concluded that it was the intention of the legislature to include the "Real" IRA within that term and that the legislation must be so construed. We therefore hold that the "Real" Irish Republican Army is proscribed by virtue of section 3 (1) (a) of the Terrorism Act 2000 and Schedule 2.

[35] We do not feel impelled to the contrary conclusion, as did the trial judge, by reason of the separate treatment of the "Real" IRA in the 1998 Act. The term 'The Irish Republican Army' in Schedule 2 comprehends all elements of the IRA but not all elements are included for the purposes of the 1998 Act. This simply reflects the fact that some organisations within the generic term, 'The Irish Republican Army', were not on ceasefire and were not entitled to benefit from the accelerated release of prisoners scheme. They had to be identified separately, therefore. This was not necessary for the purpose of proscription since it was intended that all manifestations of the IRA should be proscribed.

Section 3 (1) (b)

[36] We feel that we should consider the question whether the "Real" IRA can be said to be an organisation operating under the same name as the Irish Republican Army, if, contrary to our primary conclusion, it should not be deemed to be covered by section 3 (1) (a).

[37] Consideration of this question can only take place on the premise that there is an organisation which is not the "Real" IRA but which fits the description 'The Irish Republican Army' as it appears in the Schedule. Mr Macdonald was reluctant to identify such an organisation but much of his argument appeared to be predicated on the unarticulated assumption that this was the Provisional IRA for he was at pains to point out that the "Real" IRA had so styled themselves in order to differentiate their organisation from what had gone before.

[38] His principal submission on the application of section 3 (1) (b) was that only an organisation with an identical name to one of those listed in the Schedule would be caught. We cannot accept that this is correct. Again the context is vital. The recent history of terrorist organisations in Northern Ireland provides examples of the various paramilitary groups splintering and re-forming under a new title, bearing, in some instances at least, a resemblance to the name of the organisation that they have broken away from. While it is true that the Secretary of State may (under section 3 (3) and (4) of the 2000 Act) add an organisation to Schedule 2, in practical terms this may not always be possible with the promptness that is required to deal with swiftly changing re-groupings. We consider that the purpose of section 3 (1) (b) is to ensure that organisations that grow up as a result of schism within a

named terrorist organisation and operate under a broadly similar name should be proscribed.

[39] On this subject we should make some observations about the learned judge's transposition of the words 'under the same name' in his discussion of the ambit of section 3 (1) (b). He suggested that one required to focus on "the question whether the organisation of which the accused is an alleged member *operates as an organisation* under the name specified in the Schedule". This in turn led him to examine the manner in which the "Real" IRA operated and to contrast this with the aims and purposes of the organisation listed in the Schedule. We consider that this was a wrong approach. The focus in section 3 (1) (b) is not on the manner in which the organisations operate but on the 'sameness' of the names of the two organisations.

[40] Focusing on the operation of the organisation distracts from what we perceive to be the essential purpose of section 3 (1) (b) *viz* to include within the embrace of proscription those groups who are operating as terrorist organisations under the same name as organisations listed in the Schedule. The mode of operation of the groups need not be the same; they may be engaged in what the judge described as "a different course of criminal activity" from the named groups but if they are engaged in terrorist crime and operate under the same name they come within section 3 (1) (b).

[41] If it had been necessary to do so, we would have held that the "Real" Irish Republican Army was the same name as 'The Irish Republican Army' for the purposes of section 3 (1) (b). It is not the identical name but it incorporates all the essential elements of the listed organisation. The meaning of the word 'same' must depend on the context in which it is used. It can, of course, mean identical. But dictionary definitions also include 'of the like kind' or 'similar'. In the Australian case of *Kingsbury v Martin* (1901) 1 SR (NSW) 272 at 278 Owen J said: -

> "The word 'same' has two meanings. One meaning no doubt is 'identical', but the other is 'corresponding to', 'similar to'."

In the present context to hold that the name must be precisely the same would rob the provision of virtually all of its usefulness and we cannot believe that it was the intention of Parliament that only those groups with an indistinguishable name from one of the listed organisations would be covered by section 3 (1) (b).

DPP v Campbell

[42] The Attorney General relied on the decision of the Court of Criminal Appeal in the Republic of Ireland in the case of *DPP v Campbell* (unreported, 19 December 2003). In that case the applicant had been convicted in the

Special Criminal Court on a charge of membership of an unlawful organisation, to wit, an organisation styling itself the Irish Republican Army, otherwise *Óglaigh na hÉireann*, otherwise the IRA contrary to section 21 of the Offences Against the State Act 1939 as amended by section 2(6) of the Criminal Law Act 1976.

[43] The applicant appealed his conviction claiming, *inter alia,* that the Court had erred in holding that the "Real IRA" was a proscribed organisation within the terms of the Suppression Order published pursuant to Section 19 of the Offences Against the State Act 1939. The terms of the relevant part of the Suppression Order were: -

> "The organisation styling itself as the Irish Republican Army (also the IRA and Óglaigh na hÉireann) is an unlawful organisation and ought, in the public interest, to be suppressed."

[44] It was argued on the applicant's behalf that in reality he was accused of membership of the dissident republican group, the Real IRA. This group, it was said, was distinct from other IRA groups such as the Official IRA, the Provisional IRA and the Continuity IRA in its membership, aims and tactics. It was submitted that a Suppression Order made in 1939 based on the existence of "the IRA", in that year could not relate to an organisation that came into existence nearly sixty years after the Order was made.

[45] Delivering the judgment of the court McGuinness J said: -

> "Since [1939] the organisation which has consistently described itself as the Irish Republican Army, Óglaigh na hÉireann, or in short the IRA, has undergone various divisions and, as it were, mutations. Largely for convenience of reference different descriptive labels have been applied from time to time – 'official', 'provisional', 'continuity', 'real'. All of these terms in themselves reflect the belief and the insistence of each group that it is the genuine IRA, or the concept that there is one historic organisation, the carrier of the flame of republicanism, the possessor of roots of legitimacy … Nevertheless, as stated in evidence by Detective Superintendent Maguire … the group of which the applicant was convicted of being a member has *"a structure style and philosophy exactly the same as all organisations up to now representing themselves as the Irish Republican Army or Óglaigh na hÉireann".*

[46] The Attorney General argued that a similar approach should be adopted to the application of section 3 of the 2000 Act. Mr Macdonald countered that argument by pointing out that evidence had been given to the Special Criminal Court on the structure and philosophy of the "Real" IRA and that no such evidence was available in the present case. Moreover, the applicant in the *Campbell* case had been charged with membership of the IRA and not, as here, membership of the "Real" IRA.

[47] It is unnecessary for us to reach a final decision on the relevance of the *Campbell* decision to the present application but we are inclined to accept Mr Macdonald's arguments on this point. Neither we nor the trial judge heard evidence on whether the 'structure style and philosophy' of the "Real" IRA are exactly the same as all other organisations that have represented themselves as the Irish Republican Army. We are not in a position, therefore, to make a judgment on the congruence of the "Real" IRA's aspirations and beliefs with all those who have claimed to be the IRA in the past. In view of our conclusion that the legislative intention in enacting section 3 was that the "Real" IRA should be included as a proscribed organisation, it is unnecessary for us to reach any concluded view on this question.

Article 7 of ECHR

[48] Mr Macdonald argued that the inclusion of the "Real" IRA as one of the proscribed organisations under section 3 and Schedule 2 would infringe article 7 of the European Convention on Human Rights and Fundamental Freedoms in that the offence of belonging to that organisation is not clear from the wording of the relevant provisions.

[49] Article 7 provides: -

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

[50] In *Kokkinakis v Greece*, judgment of 25 May 1993, Series A no. 260-A, ECtHR held that article 7 required that an offence must be clearly defined in law. At paragraph 52 of its judgment the court said: -

> "52. The Court points out that Article 7 para. 1 (art. 7-1) of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy; it follows from this that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable."

[51] For the Attorney General Mr Perry argued that the offence of belonging to or professing to belong to the "Real" IRA was sufficiently defined in law. The offence was contained in primary legislation; it was clear on the face of the statute; an individual belonging to or professing to belong to that organisation could not realistically have been in any doubt as to his liability to prosecution; and that, in any event, this court's judgment would remove any such doubt.

[52] We accept the submissions made on behalf of the Attorney General on this issue. We have concluded that it was clearly the intention of the legislature to include the "Real" IRA as a proscribed organisation under section 3 and Schedule 2. Given the manner in which the various groupings of the IRA had been proscribed historically, we consider that it should have been apparent to any member of the "Real" IRA that he was guilty of an offence under these provisions if he continued his membership or professed it. We are satisfied that no violation of article 7 arises.

Conclusions

[53] For the reasons that we have given we are of the opinion that a person who belongs to or professes to belong to the "Real" Irish Republican Army commits an offence contrary to section 11 (1) of the Terrorism Act 2000.