

## **Norris v. Ireland (Application No. 10581/83)**

**From DADEL**

### **1) Reference Details**

Jurisdiction: European Court of Human Rights

Date of decision: 26 October 1988

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695424&portal=bkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

### **2) Facts**

The Applicant alleged that legal prohibitions on male homosexual activity violated his right to respect for private life in contravention of Article 8 of the Convention.

The Applicant has been a campaigner for gay rights in Ireland since 1971, and became a founding member and chairman of the Irish Gay Rights Movement. Irish law does not make homosexuality a crime in and of itself. Instead, the Offences Against the Person Act, 1861, and the Criminal Law Amendment Act, 1885 contain provisions that criminalize “buggery” between males. His complaints are directed against these laws. In November 1977, the Applicant brought proceedings in the Irish national courts claiming that the impugned laws were void under Article 50 of the Irish Constitution, which declared that laws passed before the Constitution that were inconsistent with it were no longer in force.

The Applicant also submitted evidence of harm he suffered due to the law. He suffered from deep depression and loneliness on realizing any overt expression of his sexuality would expose him to prosecution. He also claimed that his health had been affected when he fainted at a restaurant in 1969 and was referred to a psychiatrist. His doctor told him that he should leave Ireland and live in a country more hospitable to homosexuals to avoid his anxiety attacks. Even so, the Applicant has never faced prosecution and when he informed the police of his organization’s activities, he was never questioned. All that parties to the case agree that even though he has never been prosecuted, the Applicant remains legally at risk of criminal liability.

The national courts dismissed the Applicant’s claim though they upheld his standing to bring the claim. The Supreme Court held that the Convention is not part of Irish domestic law, which has long condemned homosexuality as inimical to the public order, and dangerous to public health. The national court affirmed the rationale for these laws in its decision.

### **3) Admissibility**

The Court held that Applicant has standing as a “victim” within the meaning of Article 25 paragraph 1 of the Convention. Even though the impugned laws were never applied against the defendant, they directly affect him because he has to fear prosecution whenever he engages in intimate relations with another man. Article 25 of the Convention gives individuals the right to argue that a law violates their human rights by itself, without regard to its implementation, if they are potentially at risk.

#### **4) Merits**

The Court holds that the impugned legislation interferes with the Applicant's right to respect for his private life in violation of Article 8 paragraph 1. The Court cites the Dudgeon case, in which it ruled against identical legislation in Northern Ireland. The maintenance of the impugned legislation directly and continuously interferes with the private life of the Applicant via the threat of prosecution. Further, the Government's arguments that the law is justified fail. The Court has held that social legislation must be necessary in a democratic society and proportionate to the legitimate aim pursued. The Government failed to produce evidence showing why this legislation should remain in force, while the identical legislation in Dudgeon failed in the face of the Convention. The impugned legislation imposes harms upon certain people that far outweigh any potential social benefit. That certain people are offended by homosexuality is not sufficient grounds to maintain discriminatory laws.

#### **5) Decision**

The Court held that the Applicant could claim to be a victim within the meaning of Article 25 of the Convention, even though he had never actually been subjected to prosecution under the impugned laws. Further, it found a violation of Article 8 of the Convention.

#### **6) Dissenting Opinion**

The dissent argues the Applicant is not a "victim", and thus there has been no breach of his Article 8 rights. It finds dispositive the fact that the Applicant has never been prosecuted, or hindered in his open activism for homosexual rights. The dissent worries that stretching the definition of "victim" would naturally and unjustifiably expand the Court's role in supervising national legislation in the absence of actual violations of human rights guaranteed by the Convention.