APPLICATIONS Nos. 8022/77, 8025/77 and 8027/77

Bernard Leo McVEIGH, Oliver Anthony O'NEILL
and Arthur Walter EVANS

against

the UNITED KINGDOM

This publication contains the report of the European Commission of Human Rights drawn up in accordance with Article 31 of the Convention for the Protection of Human Rights and Fundamental Freedoms, relating to the applications (Nos. 8022/77, 8025/77 and 8027/77) lodged with the Commission by MM Bernard Leo McVeigh, Oliver Anthony O'Neill and Arthur Walter Evans against the United Kingdom.

This report was transmitted to the Committee of Ministers on 24 April 1981.

As the case was not referred to the European Court of Human Rights, it was for the Committee of Ministers to decide, under the provisions of Article 32, paragraph 1, of the Convention "whether there has been a violation of the Convention".

The decision of the Committee of Ministers was taken by Resolution DH (82) 1 of 24 March 1982, the text of which is reproduced at page 116 of the present publication.

The Committee of Ministers also authorised publication of the Commission's report on this case.

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I. REPORT OF THE COMMISSION

I. INTRODUCTION

1. The following is an outline of the case as it has been submitted by the parties to the European Commission of Human Rights.

A. The substance of the application

2. The first applicant, Mr. Bernard Leo McVeigh, was aged 42 years at the introduction of his application. He is a United Kingdom citizen resident in London. The second applicant, Mr. Oliver Anthony O'Neill, was aged 31 years at the introduction of his application and is an Irish citizen also resident in London. The third applicant, Mr. Arthur Walter Evans, was born in 1919 and is a United Kingdom citizen now resident in Devon. At the relevant time the applicants were all post-office employees.

3. The applicants were originally represented by Mr. Cedric Thornberry, barrister-at-law, assisted by Mr. Jonathan Woodcock and acting on the instructions of Ms. Hilary Kitchin, solicitor to the National Council for Civil Liberties. They have since been represented by Ms. Kitchin and Dr. Paul O'Higgins of Christ's College Cambridge and, at the hearing on admissibility and merits, Mr. William Nash, solicitor. They are now represented by Ms. Harriet Harman, solicitor to the National Council for Civil Liberties.

4. The applications arise from the arrest and detention of the applicants under powers conferred by the Prevention of Terrorism (Temporary Provisions) Act 1976 ("the 1976 Act") and the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1976 ("the 1976 Order").

5. The applicants were arrested on 22 February 1977 when they arrived at Liverpool on a boat from Ireland and they were held for some 45 hours for the purpose of "examination" under the 1976 Order. During their detention they were searched, questioned, photographed and fingerprinted. Two of the applicants, Mr. McVeigh and Mr. Evans, allege that they were also denied the opportunity to contact their wives. They maintain that their arrest and detention were in breach of paras. (1) - (5) of Art. 5 of the Convention. They also maintain that there were breaches of their right to respect for private life under Art. 8 of the Convention insofar as they were searched, questioned, photographed and fingerprinted and

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the authorities retained relevant records. Mr. McVeigh and Mr. Evans also complain of the alleged refusal to allow them to contact their wives and invoke Arts. 8 and 10 of the Convention in this respect. Mr. McVeigh also made certain complaints concerning his treatment in custody, which were declared inadmissible.

B. Proceedings before the Commission

6. Each of the applications was introduced on 29 July 1977 and registered on 16 September 1977.

7. On 14 December 1977 the Commission examined the admissibility of the applications. It decided, in accordance with Rule 42 (2) (b) of its Rules of Procedure, to give notice of the O'Neill application (No. 8025/77) to the respondent Government and to invite them to submit written observations on its admissibility. The Government's observations were received on 26 May 1978 and the applicant's observations in reply were received on 16 November 1978.

8. On 15 December 1978 the Commission further considered the cases and decided to invite the Government to submit written observations on the admissibility of the McVeigh and Evans cases (Nos. 8022 and 8027/77). The observations of the respondent Government on these cases were submitted on 7 February 1979 and the applicants' observations in reply were received on 2 April 1979.

9. On 5 July 1979 the Commission declared the McVeigh case (No. 8022/77) partially inadmissible (1). It decided to hold a hearing on the admissibility and merits of the remaining parts of the McVeigh case and the O'Neill and Evans cases. The hearing was held on 7 December 1979. The applicants were represented by Mr. William Nash and Ms. Hilary Kitchin, solicitors and Mr. Jonathan Woodcock. Two of the applicants, Mr. O'Neill and Mr. Evans, were also present in person. The respondent Government were represented by Mr. David Edwards, Agent and Mrs. Audrey Glover, Deputy Agent, both of the Foreign and Commonwealth Office, Sir Vincent Evans, Q.C., Mr. N. Bratza, barrister-at-law, Mr. D. Michaels, Treasury Solicitor and Mr. A. Hammond, Miss P. Drew and Mr. A. Cole of the Home Office.

10. On 8 December 1979 the Commission ordered the joinder of the three applications under Rule 29 of its Rules of Procedure and declared them admissible (2).

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(1) See Partial Decision on Admissibility, Appendix II.

(2) See Decision on Admissibility, Appendix III.

11. Following its decision on admissibility the Commission deliberated on the cases and decided to inform the parties that it did not require any further submissions on the issues arising under Art. 5 of the Convention, although it would be open to either party, if they wished, to make additional submissions on those issues. It also decided to request the Government to submit certain further information relating to the complaints under Arts. 8 and 10 of the Convention.

12. On 8 January 1980 the applicants' representatives stated that they did wish to make further submissions under Art. 5 of the Convention. On 23 January 1980 the respondent Government submitted a Memorandum containing the information requested by the Commission. On 14 February 1980 the text of the decision on admissibility was communicated to the parties and, on the instructions of the Acting President, the applicants' representatives were invited to submit any further observations they wished to make on behalf of the applicants, on the merits of the cases, including any comments on the information submitted by the Government. The applicants' observations on the merits were submitted on 18 April 1980 and the observations of the respondent Government were submitted on 3 June 1980. On 21 July 1980 the Rapporteur, acting under Rule 46 of the Rules of Procedure, noting that there was a dispute as to the relevant facts, asked the Government to state whether they wished the opportunity to submit any further evidence in relation to the complaint of two of the applicants that they were not allowed to contact their wives. On 3 September 1980 the Government stated that they did not wish to submit further evidence on the matter.

13. Following the decision on admissibility the Commission, acting in accordance with Art. 28 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the matter. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

14. The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention and after deliberations and votes in plenary session, the following members being present:

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MM. C.A. NØRGAARD, Acting President (Rules 7 and 9 of the Rules of Procedure)
J.E.S. FAWCETT
G. SPERDUTI
E. BUSUTTIL
L. KELLBERG
B. DAVER
J.A. FROWEIN
G. JÖRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
N. KLECKER
M. MELCHIOR
J.A. CARRILLO

15. The text of the Report was adopted by the Commission on 18 March 1981 and is now transmitted to the Committee of Ministers in accordance with Art. 31 (2).

16. A friendly settlement of the case not having been reached, the purpose of the present Report, pursuant to Art. 31 of the Convention, is accordingly:

(1) to establish the facts; and

(2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

17. A schedule setting out the history of proceedings before the Commission is attached hereto as Appendix I. The Commission's partial decision on the admissibility of the McVeigh case (No. 8022/77) and the decision whereby the three applications were declared admissible form Appendices II and III respectively.

18. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

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II. ESTABLISHMENT OF THE FACTS

19. This section of the Report contains details of the facts found by the Commission on the basis of the information submitted by the parties. In general, save where otherwise indicated, the facts are not in dispute between the parties.

A. General background

20. On 29 November 1974 the Prevention of Terrorism (Temporary Provisions) Act 1974 came into effect. This Act was repealed and replaced, with some amendments, by the 1976 Act, which came into effect on 25 March 1976. The 1976 Act is supplemented by the 1976 Order, a Statutory Instrument made by the Home Secretary under powers conferred by the Act. This came into force on 27 March 1976.

21. The 1974 legislation was introduced essentially for the purpose of combatting terrorist acts perpetrated in Great Britain in connection with Northern Irish affairs. From 1970 onwards the IRA had been conducting a campaign of terrorism in Northern Ireland with the object of forcing the unification of Northern Ireland with the Republic of Ireland (1). This campaign was later extended into Great Britain. The first IRA bomb attack on the mainland took place in February 1972 and killed 7 people. In 1973 there were 86 bombing and shooting incidents resulting in one death and 383 injuries. The IRA further intensified their activities on the mainland in 1974. In the first ten months of that year they killed 19 people and injured 145 others in a total of 99 bombing and shooting incidents. 11 further attacks occurred in the first 20 days of November 1974, causing a further 4 deaths and injuring 35 people. On 21 November 1974 they placed bombs in two public houses in Birmingham which killed 21 people and injured 183 others. The 1974 legislation was introduced and passed by Parliament in the immediate aftermath of these incidents.

22. There has been a diminution of IRA activity on the mainland since. However, incidents have continued to occur. In particular in January 1977 14 incendiary devices were placed in shops in central London. In August 1977 a considerable quantity of equipment for a terrorist group, including 230lbs of explosives and 91 incendiary bombs was discovered

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(1) Cf. Case of Ireland v. the United Kingdom, Report of the Commission, pp. 162-202; Eur. Court H.R., Series A, No. 25, pp. 9-31.

in Dublin. According to the Government it was established beyond doubt that this equipment was to be brought to Great Britain. There have also been incidents subsequently including 9 bomb explosions in London and other cities in December 1978, and 2 explosions at industrial installations (a gas holder and an oil terminal) in January 1979.

23. Various forms of device have been used to carry out these acts. In some cases car bombs have been used, cars locked with explosives being left parked in city streets and detonated. The Government state that some of these cars were brought into Great Britain from Ireland on car ferries, already loaded with their explosives. Incendiary devices and letter bombs have also been used. The violence has been directed against selected individuals on some occasions, and has been used indiscriminately, by means of bombs left in crowded public places, on others. According to the Government it has been apparent that most of those who committed these acts came from Ireland, bringing with them weapons, bomb making equipment and explosives.

24. There is a "common travel area" between the United Kingdom and the Republic of Ireland. No general system of immigration control thus applies to travel between Great Britain, Northern Ireland and the Republic of Ireland.

25. Before the 1974 legislation was passed, the IRA, although proscribed in Northern Ireland and the Republic of Ireland, was not proscribed in Great Britain. It was free to organise demonstrations and collect money.

26. The operation of the legislation has been subject to a review carried out by Lord Shackleton, who was appointed for this purpose by the Home Secretary in December 1977. His Report (referred to herein as "the Shackleton Report") was published in August 1978 (1). In it Lord Shackleton generally reviewed the way in which the legislation had been operated and made a number of recommendations. The operation of the legislation has also been the subject of various questions and debates in Parliament, notably when draft Orders for its renewal have been before Parliament (para. 27 below).

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(1) Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1974 and 1976, August 1978, Cmnd. 7324.

B. Relevant domestic law and practice

1. Description of the 1976 legislation

27. The 1976 legislation, like the 1974 legislation which preceded it, is temporary in character. The 1976 Act was initially enacted for a period of twelve months (so far as concerns the substantive provisions) and has been renewed subsequently for further twelve month periods. Under the relevant provisions such renewals have been effected by means of Orders approved by both Houses of Parliament. The Act has been thus kept in force continuously since it was passed.

28. The Act is generally concerned with prevention of "terrorism". This, as defined in the Act (S.14) means "the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear".

29. The Act is divided into three Parts, Part I being concerned with the proscription of organisations, Part II with "exclusion orders" and Part III with general and miscellaneous matters, including the port controls and powers of detention at issue in the present case. The Act is also supplemented by a number of Schedules.

30. Part I of the Act provides for the proscription of organisations concerned in terrorism occurring in the United Kingdom and connected with the IRA. The IRA is proscribed under Schedule 1 to the Act and, at the relevant time, was the only organisation so proscribed. S.1 of the Act creates certain offences concerning membership of, and assistance to, proscribed organisations and S.2 creates offences connected with the public display of support for a proscribed organisation.

31. Part II of the 1976 Act confers powers on the Secretary of State to make "exclusion orders" in order to prevent acts of terrorism designed to influence public opinion or Government policy with respect to affairs in Northern Ireland. An "exclusion order" is an order prohibiting the person concerned from being in or entering the United Kingdom (S.6), Northern Ireland only (S.5) or Great Britain only (S.4). The grounds on which an exclusion order may be made are set out in each section. In general terms, the Secretary of State may make such an order if he is "satisfied" that the person concerned "has been concerned ... in the commission, preparation or instigation of acts of terrorism" or that the person is attempting or may attempt

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to enter the territory in question "with a view to being concerned in the commission, preparation or instigation of acts of terrorism". There are certain restrictions on the persons in respect of whom an exclusion order under each section may be made. Thus an order under S.4 or S.5 may not be made against inter alia a person who has been ordinarily resident in the territory in question (Great Britain or Northern Ireland) throughout the past 20 years. An order under S.6, excluding a person from the United Kingdom, may not be made against a citizen of the United Kingdom and Colonies. S.8 of the Act provides powers to remove persons subject to exclusion orders from the territory in question. S.9 creates certain offences concerning failure to comply with an exclusion order.

32. Part III of the Act contains general and miscellaneous provisions including provisions relative to arrest and detention. SS.10 and 11 create certain offences in connection with contributions towards acts of terrorism and failure to give information about acts of terrorism. In general terms it is an offence under S.11 for a person not to disclose to the competent authorities information which he knows or believes might be of material assistance in preventing an act of terrorism or securing the arrest etc. of any person for a terrorist offence.

33. S.12 of the Act empowers a constable to arrest without warrant a person whom he reasonably suspects to be guilty of an offence under S.1, 9, 10 or 11 of the Act, to have been concerned in terrorism or to be subject to an exclusion order. A person arrested under the section may be held for up to 48 hours, which period may be extended for a further 5 days by the Secretary of State. By virtue of S.12(3), various statutory provisions requiring that an arrested person be brought before a court after his arrest do not apply to persons detained in right of an arrest under S.12.

34. S.13 empowers the Secretary of State to make provision, by order, for the "examination" of persons arriving in or leaving Great Britain or Northern Ireland and also for their arrest and detention in certain circumstances. It forms the statutory basis for the port controls, powers of arrest etc. at issue in the present case. In the exercise of the powers conferred on him by S.13 and other provisions of the 1976 Act, the Home Secretary made the 1976 Order.

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35. Art. 5 of the Order confers powers on "examining officers" (under Art. 4 these are police constables, immigration officers and certain customs officers) to examine persons who have arrived in, or are seeking to leave Great Britain. Art. 6 imposes certain duties on persons who are examined. These provisions are in the following terms:

"Examination of persons arriving in or leaving Great Britain

5.-(1) An examining officer may examine any persons who have arrived in or are seeking to leave Great Britain by ship or aircraft for the purpose of determining -

(a) whether any such person appears to be a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism; or

(b) whether any such person is subject to an exclusion order; or

(c) whether there are grounds for suspecting that any such person has committed an offence under section 9 or 11 of the Act.

The reference in this paragraph to persons who have arrived in Great Britain shall include a reference to transit passengers, members of the crew of the ship or aircraft and others not seeking to enter Great Britain.

(2) Any person, on being examined under paragraph (1), may be required in writing to submit to further examination.

Production of information and documents

6.-(1) It shall be the duty of any person examined under Article 5 to furnish to the person carrying out the examination all such information in his possession as that person may require for the purpose of his functions under that Article.

(2) A person on his examination under Article 5 by an examining officer shall, if so required by the examining officer, -

(a) produce either a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship; and

(b) declare whether or not he is carrying or conveying documents of any relevant description specified by the examining officer, and produce any documents of that description which he is carrying or conveying.

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In sub-paragraph (b), "relevant description" means any description appearing to the examining officer to be relevant for the purposes of the examination."

36. Art. 7 of the Order confers various powers of search on examining officers including, in Art. 7(2), power to search persons who are examined, their baggage etc. Art. 9 provides for the making of directions for the removal from the relevant territory of any person subject to an exclusion order. By virtue of Art. 9(1)(a) such directions may be made by an examining officer "in the case of a person who is found to be subject to an exclusion order on examination under Art. 5 or against whom an exclusion order is made following such examination". In other cases directions for removal are to be given by the Secretary of State.

37. Art. 10 of the Order provides for the detention of persons liable to examination or removal. Paras. (1) and (2) of this Article provided (at the relevant time) as follows:

"10.-(1) A person who may be required to submit to examination under Article 5 may be detained, under the authority of an examining officer, pending his examination or pending consideration of the question whether to make an exclusion order against him for whichever is the longer of the following periods, that is to say -

(a) a period not exceeding seven days; or

(b) if the Secretary of State so directs, a period not exceeding that expiring on the expiry of the period of five days beginning at the end of the day on which his examination is concluded.

(2) A person in respect of whom directions for removal may be given under Article 9 may be detained pending the giving of such directions and pending removal in pursuance thereof under the authority -

(a) in the case of such a person as is mentioned in Article 9(1)(a), of an examining officer; or

(b) in such or any other case, of the Secretary of State."

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The period for which a person may be detained on the authority of an examining officer, under Art. 10(1)(a), has since been reduced, on the recommendation of Lord Shackleton, from seven days to two days, subject to extension for a further five days by the Secretary of State. A person liable to be detained under Art. 10 may, by virtue of Art. 11, be arrested without warrant by an examining officer.

38. Para. 5 of Schedule 3 to the 1976 Act also makes supplemental provision for detention under the 1976 Act and orders made under S.13 thereof (i.e. the 1976 Order). In particular, para. 5(3) of the Schedule provides as follows:

> "(3) Where a person is so detained, any examining officer, constable or prison officer, or any other person authorised by the Secretary of State, may take all such steps as may be reasonably necessary for photographing, measuring or otherwise identifying him."

2. The use in practice of the powers of arrest and detention for examination

39. In practice the powers of arrest and detention for purposes of examination under the1976 Order are operated selectively. The Shackleton Report records that in 1977, out of a total of 3,967,583 people passing through six major ports (including airports) in Great Britain dealing with passengers to and from Northern Ireland and the Republic of Ireland, only 308 were detained (para. 98). The total number detained in Great Britain under the Order during that year was 661 (ibid., Appendix E, Table 1).

40. The powers of arrest and detention are operated in conjunction with other means of control at the ports, such as the selective use of embarkation and landing cards and the inspection of other documents produced by passengers (see generally paras. 94-97 of the Shackleton Report).

41. From the information given by the Government it appears that in practice arrest or detention under the Order will, at least in the normal case, have been preceded by an initial or preliminary examination by the examining officer. He will decide whether to ask a particular passenger to identify himself. He may allow the passenger to proceed or may ask him for further information, such as the reason for his journey, details of his travel arrangements etc., and may have his

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name checked against police records. The passenger and his vehicle may also be searched at this initial stage. When the preliminary enquiries or investigations are complete the examining officer decides whether to allow the passenger to proceed or whether to require him to submit to further more detailed examination. According to the Government the examining officer will not in practice detain a person under the Order unless his suspicions have been aroused in respect of one of the matters set out in paras. (a), (b) or (c) of Art. 5(1) of the Order (see para. 35 above for text).

3. Contact between persons detained and their families, etc.

42. At the relevant time there was no statutory provision governing the question of contact between a person detained under the Order and members of his family or other persons outside.

43. The Judges Rules and Administrative Directions to the Police annexed thereto are applicable in the case of a person detained under the Order. The Judges Rules, which were drawn up by Judges of the High Court, are essentially concerned with the conditions under which statements should be taken from arrested persons if they are to be accepted by the courts as admissible in evidence. They contain guidance on the procedures to be followed in questioning and taking statements from persons in custody. They provide, for example, for the administration of a caution to a suspected person at various stages. The Administrative Directions to the Police were formulated by the Home Office and approved by the Judges. They contain more detailed instructions to the police as to the facilities to be afforded to a suspected person.

43. In the Introduction to the Judges Rules it is stated that the Rules do not affect a number of principles including the following:

> "(c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody, provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so."

44. The Administrative Directions also provide that a person in custody should be allowed to speak on the telephone to his solicitor or to his friends provided that no hindrance is likely to be caused to the process of investigation, or to the administration of justice by his doing so. They also provide that detained persons should be informed of their rights both orally and by means of notices.

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45. Neither the Judges Rules nor the Administrative Directions have force of law, but breaches thereof can be taken into account by the courts when deciding whether to admit or exclude evidence. Thus if a statement is obtained in breach of the Rules, although this does not per se render the statement inadmissible as evidence, the courts may exercise their discretion so as to exclude it.

46. The Judges Rules and Administrative Directions are also generally incorporated into the General Orders of individual police forces prescribing their detailed practice and procedures. Breach of the Rules or Directions by a police officer may thus amount to a disciplinary offence.

47. The legal position has changed since the events which gave rise to the present case. On 19 June 1978 S.62 of the Criminal Law Act 1977 came into force. This provides that an arrested person "shall be entitled to have intimation of his arrest and of the place where he is being held sent to one person reasonably named by him, without delay, or, where some delay is necessary in the interests of the investigation, or prevention of crime or the apprehension of offenders, with no more delay than is so necessary".

4. Practice concerning fingerprints and photographs

47. No legal provision requires the destruction or disposal of fingerprints or photographs lawfully taken by the police. In the case of normal criminal investigations, prints taken during the investigation are in practice destroyed unless the person in question is convicted of an offence. In that event they are stored in the National Fingerprint Collection at New Scotland Yard in London. However, the fingerprints and photographs of persons detained under the 1976 legislation are retained after their release, whether or not the detainee has been charged with, or convicted of, any offence.

48. Details of the practice followed in the case of fingerprints taken under the 1976 legislation are set out in the Government's Memorandum of 23 January 1980. The prints are held centrally in the national collection. However they are separately identified and, where the person concerned does not have a criminal conviction, they are used solely for purposes of prevention of terrorism. For the purpose of initially identifying a person arrested under the legislation, his fingerprints are compared with

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those of convicted persons. Thereafter they are retained for comparison with identified fingerprints from past terrorist incidents, for comparison with fingerprints recovered from the scene of any future incident and also for the purpose of identifying persons arrested under the legislation.

49. The photographs of persons arrested under the legislation are held centrally by the Metropolitan Police Special Branch. They are held separately from those of persons with criminal records. Some police forces also retain a copy of the photographs of persons who have been detained in their own area. They are used solely for the purpose of prevention of terrorism and chiefly for the purpose of identification.

C. The arrest and detention of the applicants

1. The arrests at Liverpool

50. On 22 February 1977, between about 18.00 and 19.00 hours, the three applicants arrived together at Liverpool in Mr. McVeigh's car on a ferry from Dublin. According to the statements they have submitted to the Commission they had been together on a motoring holiday in Ireland. They had left England on 15 February 1977. They had stayed in Dublin, Mr. McVeigh staying in hotels, whilst MM. O'Neill and Evans stayed with Mr. O'Neill's family there. They had also travelled about in Ireland and made two trips to the North. They deny having had any contact (to their knowledge) with political extremists. They maintain that they were simply on an innocent holiday.

51. When they arrived at Liverpool on their return they drove off the ferry, passed through customs and were then stopped by a plainclothes police officer. He asked them for proof of identity. Each applicant produced some form of identification. According to their statements Mr. McVeigh produced a package of personal documents, including his driving licence, a post office security pass and gun licence, Mr. O'Neill produced a post office pass and Mr. Evans a driving licence. In response to questions from the police officer they gave details of their trip to Ireland, explaining where they had been and the purpose of their visit. They also gave him various personal particulars such as their names, addresses and occupations.

52. The applicants were then kept waiting for about an hour whilst the police made telephone enquiries. They were then taken, one at a time, into a police office. There, according to their statements, each was searched and questioned about his belongings. A brief search was also made of the car.

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53. The applicants were then told that they were being arrested under "the Prevention of Terrorism Act" and that they were being taken to a place of detention where they would be fingerprinted, photographed, questioned and otherwise checked up on. They were not at that stage, so far as appears from the parties' submissions, given any more precise information as to the reasons for their arrests or the legal basis therefor.

54. The parties are not agreed as to what, if any, reason the police had for deciding to arrest the applicants. Broadly speaking the Government suggest that there was some suspicion that the applicants might have been involved with terrorism, whilst the applicants suggest that, as a matter of fact, there can have been no proper ground for suspicion against them. Further details of the parties' submissions on this point are set out in Part III of this Report (paras. 80 - 83).

2. The detention of the applicants at the Bridewell police station

(a) Reception procedure and duration of the detention

55. Following their arrest the applicants were driven to the Bridewell police station nearby. There they each went through a routine reception procedure. They were searched. Items of personal property were taken and recorded. Their personal particulars were also again taken and recorded. Each of the applicants was also handed a form entitled "Notification of further examination". This document referred to the 1976 Act and Order and required the person to whom it was addressed, being a person who had arrived in Great Britain by ship "and being a person who has been examined under Article 5(1) of the /1976 Order/ to submit to further examination in accordance with Art. 5(2) of the said Order". The form further stated that "Pending further examination you will be detained under Art. 10(1) of the Order". These forms were handed to the applicants at about 20.15 hours. They were then transferred to cells.

56. The applicants were detained at the police station until about 16.00 hours on 24 February 1977 and were thus under arrest or detention for a total of some 45 hours.

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(b) Fingerprinting, photography and questioning of the applicants

57. During the first morning of their detention each of the applicants was photographed and had his fingerprints taken. During the period of their detention they were also questioned by police. Details of their interviews with the police are set out in the statements they have submitted to the Commission.

58. Mr. McVeigh states that he was interviewed by a man in plain clothes about two hours after lunch on the second day of their detention (23 February 1977). This man took down all his "routine particulars" again and questioned him very closely on whether he had "ever belonged to any Irish political party". The applicant states: "I told him that when I first came to this country I had lived in an almost entirely Irish community and had joined Clann-n--h'Eirenne in which I remained for most of 1964/5/6 but I had then moved and since had no further connection". Mr. McVeigh also states that on the following day, shortly before their release, a Special Branch policeman "questioned me about my common law wife and her parents, where she worked, etc.".

59. Mr. O'Neill also states that he was interviewed on the afternoon of 23 February by a plain clothes man who "took down all my particulars again and asked me a number of questions on whether I had ever been associated with any Irish political parties". He states that he asked the officer, at this interview, why they had been arrested and that the officer said "the only reason he could see was that they had not liked the look of our faces".

60. Mr. Evans states that he too was interviewed on the same afternoon by a plain clothes man who "went through the usual routine details plus various employments I have had since leaving school. He then said he saw no reason for detaining me ...".

61. Each of the applicants also describes various other contacts with police officers or "prison staff" during their detention. However it appears from their statements that they were not interviewed or interrogated on any occasion except as mentioned above.

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(c) Alleged refusal to allow contact with wives

62. Mr. McVeigh and Mr. Evans each allege that during their detention they attempted to contact their wives (common law wife in Mr. McVeigh's case) but were denied the possibility of doing so. They each allege that as from about the time when they were given the written notifications of further examination, they made various requests to be allowed to telephone their wives, but that these requests led to no result. The respondent Government have contested these allegations and maintain that records kept at the time indicate that no such requests were made.

63. The applicants' version of events, as set out in their respective statements, may be summarised as follows:

64. Mr. McVeigh alleges that on being first taken to his cell he "told the warder that it was imperative that I telephoned my common law wife who was expecting me home and would be frantic if she did not hear from me". When being interviewed after lunch on the next day he asked the officer if his common law wife had been telephoned "and he said he was sure this would have been done". On arriving back in London he found that she had not received any telephone call and was "frantic with worry", having telephoned hotels in Dublin and the applicant's place of work.

65. Mr. Evans states that he asked, both before being taken to his cell and on arriving there, to be allowed to telephone his wife. On the latter occasion he explained that it was imperative that he be allowed to do so because of her mental condition. He was told that he could ask the Inspector later. He repeated his request to the warder bringing his breakfast the following morning but the warder indicated that only the Special Branch could give the necessary authority. Later in the morning, after Mr. Evans had been fingerprinted and photographed, the warder informed him that he had passed his message to the Special Branch.

At about 1.00 p.m. a Special Branch officer came to his cell. Mr. Evans explained that his wife suffered from a manic depressive condition and that he feared for the consequences if he was not able to contact her. The officer offered to make a telephone call for Mr. Evans but explained that all he could say was that Mr. Evans was detained under the Prevention of Terrorism Act. Mr. Evans felt that this would do more harm than good and eventually, Mr. Evans states, the officer agreed to telephone a trade union official. Mr. Evans hoped this person would pass a tactful message to his wife and "could quite probably work out where we were and get the

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trade union solicitors on to getting us out". The officer later told him the call had been made but, on release, Mr. Evans found that it had not. He suggests in his statement that the police officer's talk of passing on messages was merely a trick to try to obtain information and that it was particularly ruthless in view of the possible damage to his wife's mental condition.

66. The respondent Government have submitted that the applicants' allegations are unsubstantiated. They observe that there is no record of the applicants having asked to contact anyone, but that the Chief Constable had stated that had such a request been made, "it would have received sympathetic consideration". They have explained that at the relevant time it was the practice for a "detention log" to be kept in respect of each person detained under the 1976 Act at the Main Bridewell Police Station. The constable in charge of the detainee was instructed to maintain a record of various matters including requests such as those referred to by the applicants.

67. Copies of the log sheets kept in respect of the three applicants have been produced. The logs are entered on forms which contain the following instruction: "All requests, visits, periods of exercise, washing, cell transfer etc. will be recorded by the Main Bridewell Constable in Charge". The forms contain columns in which the appropriate details are to be entered.

68. The completed forms contain entries recording that the applicants were placed in their cells and supplied with bedding on the evening of 22 February. It is recorded that the same evening Mr. McVeigh asked to be, and was, seen by a doctor and returned to his cell. For the period thereafter there is a total of five entries on the form kept for each applicant. In each case two of them relate to meals and one records a "wash". The remaining entries record two visits by the "examining officer" to each applicant. In respect of each of these visits the entry made is "no request" or "no requests". There is no record of any request such as those spoken to by the applicants.

69. The applicants submit that the log sheets are clearly defective and that the Commission should accept the accounts given by them in their statements. The Government for their part accept that the log sheets do not provide a comprehensive record of events. They observe that it is intended that they should record such requests and that the Constable in Charge is instructed to maintain a record accordingly. They submit that the log sheets indicate that no such requests were made by the applicants.

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70. The Commission considers that the accounts given by the two applicants are prima facie credible. It would have been natural for them in the circumstances to have wished to inform their wives of their whereabouts. Furthermore the absence of any record of the requests spoken to by the applicants is of little significance in the Commission's opinion since, whatever should have been recorded, the detention logs were evidently not fully completed in accordance with the instructions on them. No other evidence has been adduced to cast doubt on the applicants' statements. The Commission therefore finds that the two applicants in question asked to contact their wives as alleged by them, and that they were not allowed to do so.

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III. SUBMISSIONS OF THE PARTIES

A. General submissions

1. The respondent Government

71. The Government submit that in interpreting and applying the Convention the Commission should take into account the exceptional situation in Great Britain resulting from terrorism. They emphasise that the legislation in question is temporary and preventive in character, that it is intended to meet the situation referred to, and that its continuance is justified only so long as that situation persists.

72. The general situation in Western Europe, in which all states are threatened by terrorism, which has reduced the civil liberties of everyone, should also be taken into account, in their submission. They refer in this context to legislative and other action against terrorism taken by Member States at the national and international levels, within the Council of Europe, the United Nations and the International Civil Aviation Organisation. In particular they recall that the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe has emphasised the importance of port or border controls as a first line of defence against terrorism (1) and that their opinion was endorsed by the Assembly (2).

73. The Government submit that the approach they suggest would be consistent with that adopted by the Commission in the Klass Case (Report, para. 68).

74. They believe that the legislation in question has made a decisive contribution to the protection of people in Great Britain from terrorist attack and refer to the reduction in the number of incidents since the legislation came into effect. Nonetheless it is clear, they submit, from statements by the terrorist groups that they do not intend to halt acts of violence in Great Britain. It would therefore be irresponsible now to abandon the powers in the legislation. In this context they refer to the conclusion in the Shackleton Report that "whilst the threat from terrorism continues, the powers in this Act cannot be dispensed with" (ibid., para. 160).

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(1) Report on terrorism in Europe of 5 December 1978, Assembly Doc. 4258.

(2) See Parliamentary Assembly Recommendation 852.

75. Although the matter is kept under review, the Government do not seek to invoke Art. 15 in connection with the situation. The law and practice at any given time must, they submit, be responsive to the requirements of the situation. Departures from normal standards may be appropriate to meet exceptional circumstances and it does not follow that the measures taken are incompatible with the Convention unless Art. 15 is invoked. The measures in question here are, the Government argue, fully compatible with the Convention.

2. The applicants

76. The applicants stress that the question at issue is not the necessity for the legislation but the question whether it is consistent with the Convention, or whether it has been applied in a manner contrary thereto. In any event the Government's action in the present case must be judged in the light of the situation at the relevant time, not in the light of subsequent events.

77. They submit that the exceptional powers referred to by the Government are such as may enable innocent people to be detained without reasons being given, and also enable people to be detained for questioning on a random basis. Referring to reports of Parliamentary debates and other material (1), they submit that there is great potential for misuse of the legislation. Furthermore, they argue, there is no effective judicial control.

78. Referring to a question put by the Commission concerning the possible relevance of Art. 15 of the Convention, the applicants submit that the conditions for its application have not been fulfilled since (a) there has been no declaration under Art. 15 (3) and the Government have not sought to invoke it, (b) in any event no state of emergency threatening the life of the nation existed and (c) even if there was it was not established that the measures in question were strictly required, in view of the high proportion of those detained who were released.

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(1) Report (Hansard) of Debate in House of Commons on 15 March 1978; NCCL booklet on the operation of the legislation by Catherine Scorer, published November 1976; NCCL Memorandum of Evidence to Lord Shackleton, March 1978.

B. Submissions concerning the facts

79. The parties' submissions concerning the facts are for the most part incorporated in Part II of this Report, above. However, the following further submissions concerning the background to the arrests may be noted.

1. The respondent Government

80. The Government state that during the applicants' initial conversations with the examining officer at the quayside, the suspicions of the examining officer were aroused and he decided to make further inquiries. These revealed that, in the case of at least one of the applicants, the police had information suggesting possible involvement in matters connected with terrorism in the United Kingdom. Whilst not sufficiently specific to justify the laying of a charge, this information had been sufficient to afford reasonable suspicion that the applicants had been concerned in the commission of an offence or offences. The police therefore had to investigate whether there had been involvement in the course of the holiday with matters connected with terrorism, and whether the party was engaged in terrorist activity, such as bringing in bombs in the car. It had been necessary to ascertain whether the information appeared well-founded. After such investigation the police would be able to decide whether to prefer charges against the applicants and bring them before the competent legal authority or whether to institute exclusion proceedings.

81. The Government have indicated that it is not possible, in such cases, to disclose all the information available to the police. However they could disclose one matter of which they were aware in the present case. This was that Mr. McVeigh, in the mid-1960s, had been a member of an organisation known as Clann-na-h'Eireann. This was referred to in the applicant's statement (see para. 58 above). This organisation, according to the Government, embraced a number of Irish Republican social clubs and groups in Britain. Following the split in the Republican movement in 1969-70 many of its members had left to join the Provisional IRA. The Government suggest that this information alone, coupled with the information given by the applicants concerning their visit to Ireland, could reasonably be considered to merit arrest and detention for further examination. They recall that less than a month previously thirteen devices had exploded in London and on 2 February 1977 one device had exploded in Liverpool. The police had thus been very much on the alert at the time.

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2. The applicants

82. The applicants observe that no reasonable suspicion was required for their arrest and detention under the 1976 Order and that the Government have not stated in detail what the alleged suspicion was. If there had been grounds for suspicion, they could have been arrested under S.12 of the 1976 Act.

83. They also submit that, as a matter of fact, there can have been no proper ground for suspicion against them. They refer to their background as people without criminal convictions. They observe that during the initial questioning Mr. McVeigh produced a gun licence. Before such a licence was issued the police carried out checks and they were unlikely to issue one to a suspected terrorist. The Government referred only to Mr. McVeigh's membership, 11 years previously, of an organisation which was entirely legal. Mr. Evans and Mr. O'Neill appeared to have been detained purely because of their association with Mr. McVeigh. Whatever grounds for suspicion there were it was in any event clear that they fell far short of being sufficiently concrete to form the basis of any allegation of an offence, or to found an exclusion order, since they had been released.

C. Art. 5 (1) and (3) of the Convention

84. In their applications the applicants alleged that their detention was contrary to Art. 5 (1) of the Convention, not having fallen under any of paras. (a) to (f) thereof. They also alleged, as an alternative to their main argument under Art. 5 (1)(c), that there had been a breach of Art. 5 (3). The Government have denied any breach of these provisions and have submitted that the detention was justified at all times under one or other or each of sub-paras (b), (c) and (f) of Art. 5 (1). Details of the submissions made by the Government in justification of the applicants' detention are set out below, followed by the applicants' reply.

1. The respondent Government

85. The Government submit that paras. (b), (c) and (f) of Art. 5 (1) are all relevant to justify the applicants' arrest and detention. These provisions are not mutually exclusive in the sense that an

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arrest or detention must be justified in the first instance in relation to one only of them. Provided detention is always compatible with at least one of the sub-paras. of Art. 5 (1), it is justifiable under the Convention.

86. As to Art. 5 (1) (b), the Government submit that the applicants' arrest and detention were justified on the ground that they fell within the category of "lawful arrest or detention ... in order to secure the fulfilment of any obligation prescribed by law".

87. They recall the case-law of the Commission and Court to the effect that Art. 5 (1) (b) does not authorise a person's detention in order to secure fulfilment of his general duty of obedience to the law or to prevent his committing offences, but that it permits detention only "to compel him to fulfil a specific and concrete obligation which he has until then failed to satisfy" (1). However they contrast general "obligations", such as the obligation not to belong to a proscribed organisation (2) with two other obligations under the legislation which are, they submit, "specific and concrete" obligations such as were contemplated by the Court in the Engel Case. These are:

- 1. the obligation "to submit to further examination" specified in Art. 5 (2) of the 1976 Order; and

- 2. the duty specified in Art. 6 of the Order to furnish information required by the examining officer;

(see para. 35 above for text of these provisions).

88. The obligation under Art. 5 (2) of the Order was, the Government observe, set out in the "Notification of Further Examination" served on each applicant (see para. 55 above). The duty to furnish information is expressly related to the functions of an examining officer, which in turn are carefully prescribed in limited terms. The obligation and duty are thus "specific and concrete" in the Government's submission.

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(1) Engel Case, Series A, Vol. 22, para. 69; Lawless Case, Report of Commission, Series B, p. 64.

(2) S.1 and Schedule 1 of the 1976 Act, see para. 30 above.

89. Furthermore a breach of the duty under Art. 6 (1) of the Order does not necessarily involve the commission of an offence under S.11 of the Act, according to the Government. It is an essential element of an offence under S.11 that the person concerned "knows" or "believes" that the information he has might be of material assistance in preventing an act of terrorism etc. Under Art. 6 of the Order the duty is to furnish information which the examining officer may require and it was the examining officer who assessed the matter. The detainee might be unaware that he possessed significant information. There might be circumstances which made it essential to detain a person temporarily in order to secure fuilfilment of the "duty" prescribed in Art. 6 (1) of the Order. A person might not divulge information speedily precisely because he was unaware of its significance, for instance if he was being "used" unwittingly by a terrorist organisation as a carrier of information. An initial examination might also prompt the police to pursue other lines of inquiry, necessitating an interval before examination could be resumed. The examination could be prejudiced if the detainee were released in the interim.

90. The Government observe that in Application No. 5025/71 the Commission held that Art. 5 (1) (b) applied in a case of detention to secure fulfilment of an obligation to provide information, namely an affidavit of possessions (1).

91. The Government submit that Art. 6 (1) of the Order is strictly ancillary to and limited by the purposes of Art. 5 of the Order. Insofar as a person may be detained to secure the requirement under Art. 5 (2) and the duty prescribed in Art. 6 (1), detention is only lawful to the extent that it is authorised by Art. 10 of the Order, read in conjunction with Art. 5. The combined effect of these provisions brought the applicants' arrest and detention within Art. 5 (1) (b).

92. As to Art. 5 (1) (c) and (f) in general the Government state that, depending on the information available, an examining officer may conduct his enquiries with a view to prosecution or exclusion. A change of emphasis from one purpose to another may occur during the examination. Provided the arrest or detention is always

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(1) Yearbook XIV, p. 692.

compatible with the purposes mentioned in either sub-para. (c) or sub-para. (f), it is justified under Art. 5 (1) notwithstanding that it may not be known whether deportation or prosecution is intended. Examination and detention under the Order complies, the Government submit, with either sub-para. (c) or sub-para. (f).

93. As to Art. 5 (1) (c) they submit that a person may properly be detained where there exists reasonable suspicion of his having committed a serious offence, and the purpose of the detention is to enable further evidence to be obtained sufficient to justify bringing him before the competent legal authority. Particularly in the case of terrorist offences the police may have concrete information as to a person's involvement in an offence, but still need to investigate further to obtain sufficient admissible evidence to bring him before a court.

94. The Government accept that the powers of arrest and detention under the 1976 Order are not expressly made dependent on the existence of any "reasonable suspicion". Nevertheless in practice a passenger will not be detained, they state, unless the suspicions of the examining officer have been aroused in respect of one of the matters specified in Art. 5 (1) of the Order. They submit that it is also evident from the figures in the Shackleton Report (1) that the powers are used with great discretion. They observe that the criteria in category (a) under Art. 5 (1) of the Order are in almost identical terms to those contained in Northern Irish legislation which were held by the Court to be "well in keeping with the idea of an offence" (2). Category (c) concerns examination regarding certain criminal offences and category (f) concerns exclusion orders.

95. Reasonable suspicion of having committed an offence is, they point out, only one of the grounds for a lawful arrest under Art. 5 (1) (c) of the Convention. In the context of legislation primarily designed to prevent terrorism, the provision permitting a person's arrest or detention "when it is reasonably considered necessary to prevent his committing an offence ..." is particularly relevant. No requirement of "reasonable suspicion" of a person's having "committed an offence" needs to be satisfied in order to comply with

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(1) See para.

(2) Ireland v. the United Kingdom, Series A, No. 25, para. 196.

this provision. The question whether an arrest is "reasonably considered necessary" to prevent the commission of an offence must, the Government submit, depend very much on the circumstances of the case. The question as to how strong a suspicion must be before an examining officer could reasonably act on it must be assessed in the context of the gravity and nature of the offence which it was sought to prevent. The Commission should therefore in the present case have regard to the particular context in which the provisions were invoked. In this context they refer to Lord Shackleton's reference to the need, in cases of terrorism, "to take immediate action to prevent loss of life, serious injury and acute suffering" (1). To prevent such acts it might well be necessary to arrest a person for further examination under the Order in circumstances where there was not yet reasonable suspicion of his having committed an offence. In the case of the applicants the Government were satisfied that there were in fact reasonable grounds for suspicion.

96. As to the requirement that deprivation of liberty under Art. 5 (1) (c) must be effected for the purpose of bringing the person concerned before a competent legal authority, the Government submit that the requirement under Art. 5 (1) (c), read in conjunction with Art. 5 (3), is that the person should be brought before such an authority unless he is released within the time within which this should have been done. They observe that the applicants were detained for less than 48 hours, whereas the Commission has previously held (2) that detention for a period of four days before the detainee was produced before a judge was acceptable under Art. 5 (3). They submit that in the special context of terrorist offences the provisions of Art. 10 satisfy the Convention in this respect.

97. As to Art. 5 (1) (f) the Government submit that removal under an exclusion order is in effect "deportation" and that an exclusion order is the equivalent of a deportation order. Whilst, under the 1976 Act, a person may be excluded from one part only of United Kingdom territory, and removed to another, i.e. from Great Britain to Northern Ireland or vice versa, that is, they submit, consistent

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(1) Shackleton Report, para. 135.

(2) Application No. 2894/66, Collection of Decisions 21, p. 53.

with the concept of deportation. In this respect they point out that Northern Ireland is a distinct and separate geographical unit with its own system of law and that it was treated as a separate entity for the purposes of Art. 15 of the Convention in the case of Ireland v. the United Kingdom.

98. The Government, referring to Art. 5 (1) (b) of the 1976 Order, submit that a person's arrest and detention for the purpose of ascertaining whether he is subject to an exclusion order, falls within Art. 5 (1) (f) of the Convention because entry in breach of an exclusion order amounts to an "unauthorised entry into the country" for the purposes of that provision. Furthermore they point out that another possible outcome of examination, which is seriously pursued, is to determine whether an exclusion order should be made. So long as the determination of this matter remains a purpose of the examination, the detention is justified on the ground that action is being taken against the person concerned with a view to deportation.

99. The Government submit that for all these reasons the applicants' arrest and detention were compatible with Art. 5 (1) and (3) of the Convention.

2. The applicants

100. The applicants contend that their arrest and detention did not fall within any of the sub-paragraphs of Art. 5 (1) of the Convention invoked by the Government. They submit that the powers in question are analogous to those described by the Commission in the case of Ireland v. the United Kingdom on page 88 of its Report. The deprivation of liberty was "in essence a form of initial arrest for the purpose of interrogation in the context of preservation of the peace and maintenance of order, i.e. combatting terrorism".

101. As to Art. 5 (1) (b), they refer to previous case-law of the Commission and Court, and in particular to the Court's Judgment in the Engel Case (sup. cit.). They submit that arrest and detention under the 1976 Order is not effected to compel a person "to fulfil a specific and concrete obligation which he has until then failed to satisfy". In the first place they submit that the only substantive obligation here is an obligation to be detained for interrogation. This

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is a kind of administrative detention to discharge a general duty to co-operate in the investigation process and is neither a specific nor a concrete obligation. Secondly they submit that the obligation must be an antecedent one and that there must have been an initial voluntary failure to comply with it on the part of the detainee. Here there was no failure on the applicants' part to comply with any obligation incumbent on them up to and including the time of their arrest. They furnished the information required of them at the initial examination. The obligations incumbent on them in relation to further examination were not antecedent, as had been the obligation to furnish an affidavit in the case referred to by the Government (Application No. 5025/71, sup. cit.).

102. The applicants submit that their detention accordingly did not fall within the scope of Art. 5 (1) (b).

103. As to Art. 5 (1) (c), they submit that the purpose of an arrest must be to bring a person before a "competent legal authority". The purpose of examination is to see whether there is evidence which could possibly be used to found a charge and the process is one stage removed from that at which a police officer could say he proposed bringing the detainee before a court. A series of options are open to the examining officer, including release. However under Art. 5 (1) (c) there must, the applicants submit, be an intention to bring the person before the competent authority. The 1976 Order provides, the applicants submit, for an investigation process and not for an ordinary arrest procedure such as would lead to appearances before a court. The absence in the Order of any requirement for a suspicion means that it is not necessary for a person detained to have got anywhere near the competent legal authority.

104. It could not be said that the purpose in the examining officer's mind was to bring the arrestee before a court. If it were, he could not at the same time be considering an exclusion order involving no judicial process. That involved setting off along a different channel. If there was such a dual purpose, it was one stage removed from the intention required by Art. 5 (1) (c).

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105. It is clear, in the applicants' submission, that the real purpose of their detention was "examination". The Government themselves said as much. In any event no provision complying with Art. 5 (3) read in conjunction with Art. 5 (1) (c) is applicable, the provisions of the Magistrates' Courts Act 1952 not being applicable to detention under the 1976 legislation. Furthermore the high proportion of detainees released, as shown by the statistics, tended to show that the purpose of the detention was distinct from that or normal arrest under the general law.

106. As to Art. 5 (1) (f) the applicants submit that there was clearly no question of their effecting an "unauthorised entry".

107. They further submit that exclusion is not equivalent to "deportation" for the purposes of this provision. The concept of deportation should be confined, in their submission, to inter-State removals and does not include what is tantamount to administrative or internal exile. They refer in this respect to Art. 2 of Protocol No. 4. They also observe that exclusion is a different concept in United Kingdom law to deportation under the normal immigration laws. In the ordinary and natural meaning of the words, exclusion and deportation are, they submit, different concepts.

108. Furthermore the applicants did not fall within the scope of the words "person against whom action is being taken" in Art. 5 (1) (f). When they were examined action might have been contemplated for the future but that was all. In accordance with the Commission's case-law only the existence of (deportation) proceedings justifies detention under this part of Art. 5 (1) (f) (Application No. 8081/77, X. v. the United Kingdom, Decisions & Reports 12, p. 207). No proceedings existed in the applicants' case and for this reason also Art. 5 (1) (f) was inapplicable.

109. The applicants argue that their arrest and detention were accordingly in breach of Art. 5 (1) of the Convention.

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D. Art. 5 (2) of the Convention

1. The applicants

110. In their applications the applicants complained that no attempt was made to inform them of the reasons for their arrest, save that it was under the 1976 Act.

111. They submit that Art. 5 (2) goes beyond an obligation to refer to the statutory provision permitting detention. They submit that they should also have been informed of the reasons for their arrest namely the grounds for suspicion against them.

112. Referring to the previous case-law of the Commission relied on by the Government (see para. 114 below), the applicants accept that there is no set formula for the way in which reasons should be given. However they observe that in Application No 1211/61 the applicant was informed in detail of the reasons for his arrest and intended deportation the day after his arrest (1). In the Neumeister Case (2) the applicant was questioned and confronted with his accuser long before his arrest. In the Nielsen Case (3) the applicant was informed in general terms of the charge against him at the time of his arrest. Here such information was not given, and the whole object of the relevant legislation is to obviate the need for giving it. The reasons given were not sufficient and there was a breach of Art. 5 (2).

2. The respondent Government

113. The Government submit that the information given, which included both the specific legal basis for the detention and the reason for it, namely "pending further examination" was sufficient.

114. According to the Commission's case-law, Art. 5 (2) does not require the information to be given in any special form or that a full description of all charges be given at the moment of arrest (4). The reasons for the arrests must also have become apparent from the questions asked by the police, as in the Neumeister Case (sup. cit.).

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(1) Yearbook V, p. 224

(2) Application No 1936/63, Yearbook VII, p. 224

(3) Application No 343/57, Yearbook II, p. 412

(4) Application No 2621/65, Yearbook IX, p. 474; Application No 4220/69, Collection of Decisions 37, p. 61.

115. In the context of inquiries into terrorism it would frequently prejudice police investigations and could endanger life if full details of the grounds for an arrest always had to be given at the time. Witnesses might be threatened, interfered with or even murdered. Further information must be given if charges were preferred, but in this context the distinction between Art. 5 (2) and Art. 6 (3)(a), referred to by the Commission in the Nielsen Case (sup. cit.), is relevant.

116. Here, as in the case of Caprino v. the United Kingdom (1), the applicants were given the "essential facts relevant to the lawfulness" of their detention. The reasons given were sufficient and there was no breach of Art. 5 (2).

E. Art. 5 (4) of the Convention

1. The applicants

117. The applicants submit that no procedure was available in which they could effectively test the "lawfulness" of their detention since (a) there was an administrative practice whereby persons detained under the legislation were denied access to a lawyer or other person who might apply for habeas corpus and (b) habeas corpus was not in any event an effective remedy since their detention appeared incontestably lawful in domestic law.

118. As to the former point the applicants refer to passages in various official reports and other publications concerning the denial of access to solicitors to people held in police custody (2). In their submission these support their contention that there is an administrative practice to deny such access to persons detained under the 1976 legislation. They submit furthermore that it is the common experience of solicitors acting for persons detained under the legislation that their clients are not allowed to contact them from custody. They also refer in this context to the statements of MM McVeigh and Evans concerning the question of contact with their wives and Mr Evans' wish to contact a trade union official (see paras. 64 and 65 above).

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(1) Application No 6871/75, Decision of 3 March 1978 (Extracts published in Decisions and Reports 12, p. 14)

(2) Shackleton Report, para. 92; Report by Sir Henry Fisher into circumstances leading to the trial of three persons on charges arising out of the death of Maxwell Confait, HMSO 1977; Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland, (1979) Cmnd. 7497; "Police Interrogation and the Right to See a Solicitor", 1979 Criminal Law Review, p. 145.

119. As to the effectiveness of habeas corpus as a remedy the applicants rely generally on their arguments at the admissibility stage on the question of domestic remedies (see Decision on Admissibility, Appendix III). At that stage they suggested inter alia that in cases involving national security the courts were reluctant to intervene and would accept statements by the authorities that, for instance, they had acted on information which could not be disclosed for security reasons. They submitted that in the case of detention under the 1976 Act the detainee could not challenge the action taken as he was not told, except in vague terms, the grounds on which the authorities had acted. They suggested that it would not have been possible to pursue a habeas corpus application without legal aid, which was unlikely to be granted in face of an adverse opinion by counsel. They also referred to para. 5 of Schedule 3 to the 1976 Act and submitted that its provision that persons detained under the Act or Order should be "deemed to be in legal custody" would prevent habeas corpus from lying.

2. The respondent Government

120. The Government submit that the existence of inter alia the remedy of habeas corpus is an answer to the applicants' complaint under Art. 5 (4). Habeas corpus has the fundamental features referred to by the Court in para. 76 of its Judgment in the Vagrancy Case (1). The reason underlying the decision giving rise to the detention is not a matter within Art. 5 (4). In this respect the Government refer to the Commission's decision in Application No 858/60, a case concerning detention pending deportation, where the Commission stated that the inquiry provided for in Art. 5 (4) was concerned "with the lawfulness of the measures taken, but not necessarily with the grounds on which they were taken" (2). In para. 78 of its Judgment in the Vagrancy Case the Court stated that regard must be had to the particular circumstances and, in the Government's submission, the circumstances of the present case are more comparable to those of Application No 858/60 than to cases of long detention. The judicial enquiry therefore need not extend beyond the lawfulness of the measures in question.

121. Referring to the applicants' submissions the Government observe that the applicants' statements do not show that they informed the police that they wished to take legal proceedings and submit that the allegation that they were prevented from applying for habeas corpus by an administrative practice is unsubstantiated. They also submit that the provision in Schedule 3 to the Act that a detained person should be "deemed to be in lawful custody" could not block the remedy of habeas corpus. This is a technical provision concerning

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(1) Series A, Vol. 12.

(2) Yearbook IV, p. 224 at p. 238

the status of a person validly detained. If he considers that his detention is not valid he can still apply for habeas corpus, as is shown by the many applications by persons detained under the Immigration Act 1971, notwithstanding a similar provision.

122. The Government further submit that in any event the present cases fall within the principle laid down in Application No 7376/76 (1) whereby there is no violation of Art. 5 (4) if the detention ceases within a period shorter than would be required for even a very speedy procedure.

123. They submit that there was therefore no breach of Art. 5 (4) here.

F. Art. 5 (5) of the Convention

1. The applicant

124. The applicants submit that since they had no enforceable right to compensation in respect of the contraventions of Art. 5 (1) - (4) of which they complained, there was a breach of Art. 5 (5). In this respect they refer to the Commission's decision in Application No 5962/72 (2).

2. The respondent Government

125. The Government submit that since there was no violation of Art. 5, no right to compensation arises under Art. 5 (5). In any event they submit that the Commission is not competent to consider this complaint until the question whether the detention contravened Art. 5 (5) has been finally determined by the Court or by the Committee of Ministers. In this respect they refer to para. 76 of the Commission's Report in the Wemhoff Case (3).

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(1) X and Y v. Sweden, Decisions and Reports 7, p. 123.

(2) X v. Norway, Decisions and Reports 2, p. 52.

(3) Series B, p. 90.

G. Art. 8 of the Convention - searching, questioning, fingerprinting and photography of the applicants and retention of relevant records

1. The applicants

126. In their original applications the applicants maintained that they were victims of unjustified interferences with their respect for private life, contrary to Art. 8, during their detention. They argued that compulsorily to fingerprint a person without rational basis for arrest and detention (grounds for which were exhaustively set out in Art. 5) was in breach of Art. 8. Alternatively, fingerprinting was not justified under Art. 8 (2). Photographing them was also in breach of their right to private life. In contrast to Application No 5877/72 (X. v. the United Kingdom, Collection of Decisions 45, p. 90), where the Commission appeared to have accepted in principle that photography of an individual without his consent could breach his right to private life, there was no question of any "public activity" on the applicants' part. If the initial deprivation of liberty was in breach of Art. 5, consequent photography of the applicants was also unlawful. Alternatively, no justifiable basis for the interference could be advanced under Art. 8 (2). Art. 8 had also been breached in that, whilst in custody contravening Art. 5, they had been (a) searched and (b) required under threat of continuing unlawful custody to answer questions about their private life.

127. In subsequent submissions they reiterate that if the original detention involves breach of Art. 5, subsequent searching, fingerprinting and photographing is in breach of Art. 8 unless justified under para. 2 thereof. In that respect it must be shown that the measures in question were necessary not merely helpful or desirable in protecting the interests enumerated in Art. 8 (2).

128. They further submit that even if fingerprinting, photographing etc, of persons detained on suspicion but not charged is found not to be a violation of Art. 8, the subsequent retention of the relevant records after their release is such a violation. They specify that the records with which they are concerned are those of fingerprints and photographs and of information obtained in the course of their questioning. They submit that para. 5 (3) of Schedule 3 to the 1976 Act authorises the taking of fingerprints, etc, primarily for purposes of identification and that the wording of the provision shows this. They observe that under current practice, this is the only instance in which an unconvicted person's fingerprints come to be retained on the records.

129. As to the question whether fingerprinting and photography fall within the scope of Art. 8 at all, the applicants observe that the Commission has not held, in its previous case-law, that such measures fall outside the scope of Art. 8, (Application No 5877/72, sup.cit.; Application No 1307/61, Yearbook V, p. 230). They observe that there is

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growing concern, nationally and internationally, about basic issues of privacy and submit that such measures should not lightly be excluded from the concept of private life. In days of computerised records, no one knew exactly what invasions of privacy might result from the retention of records. The capabilities of cross-referencing material in data banks were known and concern relating to such matters had led to publication of the report of the Committee on Data Protection (Cmnd. No. 7341). This Committee recommended the imposition of substantial safeguards in relation to police records.

130. The applicants observe that they have no means of knowing how the fingerprints, photographs and other details obtained during their detention will be used. Recent United Kingdom cases concerning the vetting of potential jurors reveal, they submit, the staggering extent of information on police records.

131. Referring to submissions by the Government under Art. 8 (2), the applicants submit that the retention of fingerprints is not in accordance with any procedure prescribed by law. Whilst there is nothing compelling the police to destroy them, there is no legal provision justifying or regulating their detention. Furthermore the absence of legal controls or safeguards is, they submit, also relevant under Art. 8 (2) in accordance with the principles laid down by the Court in the Klass Case in relation to secret surveillance measures. In particular they refer to passages in paras. 49 and 50 of the Court's judgment to the effect that there must be adequate and effective safeguards against abuse in any system of secret surveillance.

132. As to the administrative practice referred to by the Government, whereby such records are used only for the purpose of prevention of terrorism, the applicants observe that even if such a practice exists, it can be changed at any time without the need for legislation, or even any announcement. It could be changed so that records were retained beyond the period when the legislation remained in force. The Government have not, the applicants submit, stated what administrative safeguards exist to prevent unauthorised access to the records, or what authority has to be produced by persons wishing to obtain access to them. They refer to a book, entitled "Policing the Police" (1), and submit that from the analysis contained therein it appears that the names of persons detained under the legislation may well appear in the "wanted/missing index" of the police national computer (p. 83). Information concerning their detention may thus be available through normal police channels without specific safeguards. Furthermore they state that the "Stolen/ suspect Vehicle Index" is known to contain information relating to organisations to which the registered owner of a vehicle may belong, (ibid. p. 77). Whilst there is no specific information as to how such material comes to be placed on the computer, the applicants submit that

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(1) Policing the Police, Volume 2, ed. Peter Hain, published by John Calder, London 1980.

it appears not impossible that information obtained during interview from persons detained under the 1976 Act could find its way into the computer and become available to any police officer making a routine enquiry.

133. The applicants state that they quote these examples only to show the potential for use or misuse of information obtained from them. They have no way of knowing whether details obtained from them are recorded in this way but submit that it is clear from the analysis in "Policing the Police" that the potential for this and other uses exists. They also point out that the Committee on Data Protection referred in their Report to the lack of safeguards concerning linkage of information held on police records with other information (1).

134. The applicants submit that, in the absence of adequate safeguards, the retention of the material obtained as a result of their detention cannot, in light of the principles laid down in the Klass Case, be justified under Art. 8 (2). It is thus in breach of this provision.

2. The respondent Government

135. The Government first request the Commission to bear in mind the context in which the alleged violations of Art. 8 are said to have taken place.

136. As to the complaints in the applications concerning the measures taken during the applicants' detention, the Government deny that any of the applicants were threatened with continued detention if they failed to answer questions. Furthermore they submit that no evidence has been produced by the applicants which in any way substantiates their complaints concerning questions about private life. As to the taking of fingerprints, and photographs, the Government submit that there was a rational basis for detention and that it was lawful. The taking of fingerprints from suspects forms a normal part of a conscientious investigation, and can be compared in this respect to a medical examination (Application No 986/61, Yearbook V, p. 198). It is not contrary to Art. 8. As to the photography of the applicants, the Government submit that the applicants have unjustifiably extended the scope of the Commission's decision in Application No 5877/72, (sup. cit.), and do not accept that the applicant's situation was encompassed by "private life". Referring to the Commission's previous case-law (Application No 986/61, sup. cit. and Application No 1307/61, Yearbook V, p. 230) they submit that in any event the taking of fingerprints and photographs is justified under Art. 8 (2) as necessary for the prevention of crime. As to the searching of the applicants, the Government submit that they have adduced no evidence showing a violation of Art. 8 (1) and in any event any such interference would have been justified under Art. 8 (2).

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(1) Command 7341, para. 23.09.

137. As to the retention of records, the Government first point out that the records in question are obtained in accordance with law and that there is no provision requiring their destruction. They recall that in the Belgian Linguistic Cases the Court held that the object of Art. 8 (1) is essentially to protect the individual against arbitrary interference in his private or family life (1). Since the taking of fingerprints and photographs was fully in accordance with law, their retention could not be regarded as arbitrary nor could it seriously be claimed to interfere with their private and family lives. How did it affect their private and family lives? There is accordingly no interference with the rights protected by Art. 8 (1) in the Government's submission.

138. In any event the retention of the records is justified under Art. 8 (2), they submit, as necessary in the interests of national security, public safety and the prevention of disorder and crime. The exceptional practice of retaining such records in respect of persons detained under the 1976 legislation is justified by the nature of the activities the legislation is designed to combat. Terrorism cannot be tackled effectively by relying wholly on traditional police methods and powers. The fact that a person is not charged or excluded does not necessarily mean that he has no involvement in terrorism and there may even be good reasons for deciding against prosecution or exclusion where the police have substantial evidence.

139. The retention of the records, the Government state, assists the police in enquiries about persons detained under the legislation, in tracking down persons responsible for terrorist acts and in eliminating persons from their enquiries. The Government stress the importance in this context of rapid identification of likely culprits and recall that identity cards are not required in the United Kingdom. Furthermore, due to the very nature of terrorist offences forensic evidence is of paramount importance. The retention of the records is thus vital to assist police in the fight against terrorism and the United Kingdom is by no means alone in retaining such records where the person concerned has not been charged and convicted.

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(1) Judgment of 23 July 1968, Series A, No. 6, p. 33.

140. The Government also recall that the Commission has previously held that the keeping of records, including documents, photographs and fingerprints is not in violation of Art. 8 (Application No. 1307/61, sup. cit.). They point out that in that case the applicant's conviction had been quashed on appeal but the records were retained. It also appeared to have been the Commission's view there that Art. 8 (1) normally had no relevance to the retention of police records. In addition in Application No. 5877/72 (sup. cit.) photographs of the applicant were retained although there was no criminal conviction and the Commission found no interference under Art. 8 (1). Further, if the police were required to destroy the case-file in any case where they decided not to prosecute, it would be difficult for the Government to deal with cases such as the present ones before the Commission.

141. Finally the Government do not accept the applicant's suggestions to the effect that the system governing the retention and use of such records is not properly applied and is open to abuse. They submit that these insinuations are irrelevant to the issues raised by the present applications and declared admissible by the Commission.

H. Arts. 8 and 10 of the Convention - contact of the applicants McVeigh and Evans with their wives

1. The applicants

142. In their original applications MM. McVeigh and Evans complained that they had been prevented from joining their wives when detained contrary to Art. 5 and had also been prevented from communicating with them, in breach of their rights to respect for private and family life under Art. 8 of the Convention. To prevent them from communicating with their wives when in unlawful custody (in terms of Art. 5) was also in breach of Art. 10.

143. Tbe applicants further submit that the restriction on their ability to communicate with their wives was not justified under Art. 8 (2). In the first place they submit that it was not "in accordance with the law". The Judges Rules and Administrative Directions referred to by the Government are not legal rules, they point out.

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They are not relevant except in case of a prosecution and also confer a discretion on the police to deny access to a solicitor. They further submit that there is in any event an administrative practice of ignoring the relevant provisions, and that that is sufficient to prevent their being in accordance with the law. They refer in this respect to their suggestion that it is the common practice for persons detained under the legislation to be denied access to their solicitors (see above para.118). They suggest that S.62 of the Criminal Law Act 1977 was passed because of widespread feeling that the corresponding part of the Administrative Directions was not being complied with.

144. The applicants submit that no information has been produced by the Government upon which even a subjective decision could have been taken to the effect that a refusal to allow contact was necessary for any of the purposes referred to in the Administrative Directions.

2. The respondent Government

145. As to the complaint that the applicants were prevented from joining their wives, the Government submit that the detention was lawful, and insofar as its alleged unlawfulness is the basis of this complaint, the complaint is ill-founded. Furthermore, the enforced separation was not of such duration and nature as to amount to an interference with the right under Art. 8 (1). In any event the separation was justifiable under Art. 8 (2) since lawful detention inevitably interferes with private and family life (Application No. 8186/78, Decisions & Reports 13, p. 241). To hold otherwise would render examination under the legislation impossible in practice and hinder the apprehension of terrorists.

146. As to the complaint concerning hindrance on the applicants' communication with their wives, the Government submit that the facts alleged, even if true, would not be sufficient to amount to an interference with private and family life under Art. 8 (1). In this respect they refer to a previous finding by the Commission to the effect that a deportation involving "disturbance" to family life was not an interference under Art. 8 (1) (Application No. 7729/76, Agee v. the United Kingdom, Decisions & Reports 7, p. 164). The interference must, they submit, be "substantial" (Application No. 7729/76; Application No. 6870/75, Decisions & Reports 10, p. 37 at p. 65; Application No. 6357/73, Decisions & Reports 1, p. 77 at p. 78).

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147. The Government submit alternatively that any interference was justified by Art. 8 (2). In this respect they argue that notwithstanding that the Judges Rules and Administrative Directions are not in themselves rules of law, the arrangements covered by them are nonetheless "in accordance with the law" for the purposes of Art. 8 (2). In the first place, these provisions are recognised by the courts as laying down standards which the courts seek to ensure are upheld. Secondly a breach of the Rules or Directions can be countered by an effective legal sanction in that failure to conform with them may render statements obtained inadmissible as evidence. Finally a breach of them may result in disciplinary proceedings against the police officer concerned.

148. As to the other criteria contained in Art. 8 (2), the Government submit that the measures complained of were necessary for the prevention of disorder or crime for the protection of the rights and freedoms of others and in the interests of national security. The police had information suggesting the applicants were possibly involved in matters connected with terrorism. In such circumstances there is a risk that if immediate intimation of the detention is allowed to a detainee's family or solicitor, before the value of the information relied on can be ascertained, other persons involved in terrorism may be warned of the action being taken and take steps to avoid detection.

149. The Government submit that the provisos attaching to the Judges Rules and (now) to S.62 of the Criminal Law Act 1977 allowing delay in intimation of a person's arrest are essential in certain circumstances to avoid the risk that evidence may be destroyed, that other offenders may escape or that other offences may be committed. They submit that they are not dissimilar in concept and form to Art. 8 (2) itself and entirely consistent with it. If any arrested person had an absolute right to contact a third person with information of the fact and place of his arrest, investigation of crime would be seriously hindered. The decision must rest with the police conducting the investigation. It involves a subjective appreciation of the facts and a margin of appreciation must be allowed.

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150. Reasons why access to a solicitor might be denied to a person detained under the legislation are set out in the Shackleton Report, paras. 85-92. The Government draw attention in particular to passages concerning dangers that information may be passed on and the dangers when part only of a terrorist group has been apprehended (para. 92). They also draw attention to the conclusions in paras. 147 and 148 of the Shackleton Report. In particular para. 148 recommends that requests for notification of an arrest to the detainee's family should be fulfilled unless there are specific reasons relating to the danger that accomplices will be alerted. They point out that it may take some time before the police are in a position to satisfy themselves that there will be no such danger.

151. In light of these arguments the Government submit that the measures in question were thus not in breach of the applicants' rights under Art. 8. They rely on the same arguments under Art. 10.

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IV. OPINION OF THE COMMISSION

A. Points at Issue

152. The following are the principal points at issue under the Convention in the present case:

- 1. Whether the arrest and detention of the applicants was compatible with Art. 5 (1) of the Convention, and in particular whether it was justified under any of sub-paras. (b), (c) or (f) of that provision;

- 2. Whether the applicants were informed of the reasons for their arrest as required by Art. 5 (2);

- 3. Whether there was any breach of Art. 5 (3) insofar as it guarantees a right to persons detained under Art. 5 (1) (c) to be brought promptly before a judge or other judicial officer;

- 4. Whether the applicants were deprived of their right, under Art. 5 (4), to take proceedings whereby the lawfulness of their detention could be determined;

- 5. Whether there was any breach of Art. 5 (5) insofar as it guarantees an enforceable right to compensation;

- 6. Whether the searching, questioning, fingerprinting and photographing of the applicants and the retention of relevant records involved an interference with their right to respect for private life guaranteed by Art. 8 (1) of the Convention and, if so, whether such interference was justified under Art. 8 (2);

- 7. Whether the fact that Mr. McVeigh and Mr. Evans were prevented from joining their wives was an interference with their right to respect for private and family life under Art. 8 (1) and, if so, whether such interference was justified under Art. 8 (2);

- 8. Whether the fact that Mr. McVeigh and Mr. Evans were prevented from communicating with their wives was:

- a. an interference with their right to respect for private and family life under Art. 8 (1) *and*, if so, whether such interference was justified under Art. 8 (2); or

- b. an interference with their freedom of expression under Art. 10 (1) and, if so, whether such interference was justified under Art. 10 (2).

B. The Background and General Approach

153. In the course of the proceedings both parties have made various submissions concerning the background to the case, in particular the terrorist activity which has taken place in Great Britain, and its relevance to the Convention issues. Before entering on its consideration of the specific issues outlined above the Commission finds it appropriate to make certain general remarks concerning its approach to the case.

154. In the first place the Commission observes that its function is solely to consider whether the measures taken in respect of the present applicants violated their rights under the Convention. In accordance with the consistent case-law of the Court and Commission, it is not the task of the Convention organs, in an application under Art. 25 of the Convention, to examine in abstracto whether domestic legislation is, in itself, in conformity with the Convention. They must, as far as possible, confine their examination of such a case to the manner in which the legislation in question has actually been applied to the individual applicant (see e.g. Marckx Case, Judgment of Court, Series A, No. 31, p. 13, para. 27; Guzzardi Case, Judgment of 6 November 1980, para. 88).

155. In the second place the Commission notes that the measures at issue here were taken under legislation which was enacted, and has been applied, for the purpose of combatting a campaign of terrorism. This legislation admittedly involves temporary and abnormal restrictions within the field of Convention rights. There is no question but that the right to personal liberty as normally applied within the United Kingdom has been to some extent circumscribed by the legislation, and by

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the powers of arrest and detention applied to the present applicants in particular. The terrorist campaign in Great Britain, which has led to the introduction and continuance of the legislation, has arisen out of, and is in reality merely an extension of, the emergency situation in Northern Ireland. Various derogations from the Convention have been made by the respondent Government under Art. 15 of the Convention in respect of that situation (see e.g. Case of Ireland v. the United Kingdom, Series A, Vol. 25). Nonetheless, the Government have not sought to invoke Art. 15 in respect of the situation in Great Britain. In respect of the present applications they have based their case solely on the contention that the measures taken did not breach the applicants' rights under the substantive provisions of the Convention.

156. In these circumstances the Commission considers it is not called upon to consider any question under Art. 15 and will confine itself to considering whether the measures taken against the applicants breached their rights under Arts. 5, 8 or 10 of the Convention, as alleged by them.

157. Nonetheless, in examining that question the Commission must still take into account the general context of the case, including the purpose of and general background to the legislation whose application is at issue. It is well established in the case-law of the Court that the Convention must be interpreted and applied in the light of present day conditions (e.g. Tyrer Case, Series A, No. 26, p. 15, para. 31; Marckx Case, Series A, No. 31, p. 19, para. 41). The existence of organised terrorism is a feature of modern life whose emergence since the Convention was drafted cannot be ignored any more than the changes in social conditions and moral opinion which have taken place in the same period (c.f. Handyside Case, Judgment of Court, Series A, Vol. 24, p. 22, para. 48; Klass Case, Judgment of Court, Series A, Vol. 28, p. 23, para. 48; Marckx Case, sup. cit.). It faces democratic Governments with a problem of serious organised crime which they must cope with in order to preserve the fundamental rights of their citizens. The measures they take must comply with the Convention and the Convention organs must always be alert to the danger in this sphere adverted to by the Court, of "undermining or even destroying democracy on the ground of defending it" (Klass Case,

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sup. cit., para. 49). However as both the Commission and Court observed in that case, some compromise between the requirements for defending democratic society and individual rights is inherent in the system of the Convention (ibid., para. 59, Report of the Commission, para. 68). Particularly in assessing such matters as the "necessity" for a given measure in a "democratic society" (c.f. para. (2) of Art. 8 etc.), specific requirements of the situation facing the society in question must be taken into account.

158. Finally the Commission notes that, according to the Government, the present applicants were arrested and detained because some suspicion arose that they were involved in terrorist activities. In this respect the Commission emphasises that, whatever the belief of the authorities at the relevant time may have been, there is no evidence before it and it has not even been alleged, that in fact the applicants had been so involved. The Commission accordingly approaches the case on the basis that the applicants were, as stated by them, innocent holidaymakers.

C. Art. 5 (1) and (3) of the Convention - the deprivation of liberty

159. The Commission has first considered the applicants' complaint to the effect that their arrest and detention were contrary to Art. 5 (1) and their alternative argument to the effect that if their detention was authorised under Art. 5 (1)(c), there was a breach of Art. 5 (3).

160. Paras (1) and (3) of Art. 5 of the Convention, so far as relevant, are in the following terms:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
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> ...
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> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

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(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

161. The first question which arises is whether the applicants' arrest and detention was compatible with Art. 5 (1). The Government have maintained that it was justified under one or other or each of sub-paras. (b), (c) and (f) of this provision. The Commission does not find that any of sub-paras. (a), (d) or (e) are relevant and accordingly confines itself to examining the applicants' detention in the light of the provisions invoked by the Government.

162. In the Commission's opinion for a deprivation of liberty to be permissible under Art. 5 (1) it is necessary that at any given time, throughout its duration, it should fall within one of the categories of arrest or detention enumerated in sub-paras. (a) to (f) thereof. These form an exhaustive list of exceptions to a fundamental Convention right, and as such fall to be narrowly interpreted (see e.g. Winterwerp Case, Judgment of Court, Series A, Vol. 33, p. 16, para. 37).

162. It is true, as the Government have suggested, that they are not mutually exclusive. Thus it is quite conceivable that a person may, at a given time, be deprived of his liberty in accordance with more than one of the sub-paragraphs, or that the purpose or character of

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his detention may change so that what was initially justified under one sub-paragraph ceases to be so, but comes to be justified under another one. This happens for instance when a person detained on remand under Art. 5 (1) (c) is convicted and sentenced to imprisonment by a competent court, as envisaged in Art. 5 (1) (a). Nonetheless, it is essential that at any given time the requirements of at least one sub-paragraph should be fully satisfied.

164. Before considering the applicants' detention under the individual sub-paragraphs, it is appropriate to make certain observations concerning its purpose or nature as a matter of fact and in domestic law.

165. Each of the applicants was detained "under the authority of an examining officer pending his examination ..." in accordance with Art. 10 (1) of the 1976 Order (see para. 37 above). This was the reason for the detention given by the authorities in the forms of notification served on the applicants, where it was stated that they would be detained "pending further examination". The purpose of such examination, as set out in Art. 5 of the 1976 Order (see para. 35 above) is in broad terms to determine (a) whether the person examined appears to be concerned in terrorism, (b) whether he is subject to an exclusion order or (c) whether there are grounds for suspecting that he has committed an offence under S.9 or S.11 of the Act. Those sections relate, respectively, to non-compliance with exclusion orders and failure to disclose information concerning terrorism.

166. It is not necessary, as a matter of domestic law, that the examining officer should suspect or believe that a person has been concerned in terrorism, or is subject to an exclusion order or has committed an offence before he can lawfully effect an arrest under Art. 10 of the Order. On the other hand, the Government state that in practice an examining officer will not make such an arrest unless his suspicions are aroused in respect of one of these matters. On the information before it the Commission sees no reason to doubt this, particularly in view of the selective way in which the powers are actually used (see para. 39 above). However, in law no suspicion is required and the purpose of the detention is, in essence, to allow an "examination" or investigation to take place so as to ascertain whether grounds for suspicion exist sufficient to justify either the bringing of a criminal charge or the making of an exclusion order.

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167. The Commission further notes that under Art. 10 (1) of the Order a person may be detained "pending his examination or pending consideration of the question whether to make an exclusion order against him". In the present case the applicants were informed that they were being detained pending their "examination". No suggestion has been made that the purpose of the detention was to consider whether to make exclusion orders against them, except insofar as a purpose of "examination" is to consider whether there are grounds on which an application can be made to the Secretary of State to make an exclusion order. However the sole legal basis for the detention put forward in the present case is that it was detention pending "examination".

Art. 5 (1) (b)

168. Under this sub-paragraph the Government submit that the applicants' arrest and detention was justified on the ground that its purpose was to secure the fulfilment of certain obligations prescribed by law. These are the obligation "to submit to further examination" prescribed in Art. 5 (2) of the 1976 Order and the duty to furnish information required by the examining officer, which is prescribed in Art. 6 (1) of the Order (see para. 35 above).

169. The applicants submit, with reference to the Court's Judgment in the Engel Case in particular, (a) that the obligations referred to by the Government are not "specific and concrete" and (b) that there had not been any pre-existing failure on their part to fulfil any obligations incumbent on them. They submit that the detention was not therefore justified under this provision.

170. The Commission first notes that there is no question of the applicants having failed to comply with the lawful order of a court. The only question is whether there was "lawful arrest or detention ... in order to secure the fulfilment of any obligation prescribed by law". The Commission will first consider the general interpretation of this phrase.

171. As both parties have pointed out, the Court held in the Engel Case that these words "concern only cases where the law permits the detention of a person to compel him to fulfil a specific and concrete obligation which he has until then failed to satisfy" (Judgment, para. 69). The equivalent passage in the (authentic) French text of the Judgment refers to "les cas où la loi autorise à détenir quelqu'un pour le forcer à exécuter une obligation spécifique et concrète qu'il a négligé

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jusqu'ici à remplir". Both the Commission and the Court have consistently rejected a wide interpretation of the phrase such as would, for instance, authorise administrative internment for the purpose of compelling a citizen to comply with general obligations arising from criminal law (see e.g. Lawless Case, Report of Commission, Series B, p. 64; Engel Case, Judgment of Court, sup. cit.; Guzzardi Case, Report of Commission, para. 103, Judgment of Court, para. 101).

172. Although the "obligation" must thus be "specific and concrete", Art. 5 (1) (b) does not require that it should arise from a court order. The case of non-compliance with such an order is covered specifically in the first leg of this provision. However detention is authorised only to "secure the fulfilment" of the obligation. It follows that, at the very least, there must be an unfulfilled obligation incumbent on the person concerned and the arrest and detention must be for the purpose of securing its fulfilment and not, for instance, punitive in character. As soon as the relevant obligation has been fulfilled the basis for detention under this leg of Art. 5 (1) (b) ceases to exist.

173. The applicants submit, however, that Art. 5 (1) (b) goes further than this and that the obligation in question must be an antecedent one and some voluntary failure to comply with it must already have taken place before detention to secure its fulfilment is justified. The Commission considers that there is much force in this argument, which is supported by the above-quoted dicta of the Court in the Engel Case, and particularly the Court's use of the words "négligé ... à remplir" and "failed to satisfy" in the passages referred to. This branch of Art. 5 (1) (b) is primarily intended, in the Commission's opinion, to cover the case where the law permits detention as a coercive measure to induce a person to perform a specific obligation which he has wilfully or negligently failed to perform hitherto.

174. Nonetheless, the wording of Art. 5 (1) (b) does not expressly require that there should have been such deliberate or negligent failure on the part of the detainee. It requires only that the purpose of the detention should be to secure the fulfilment of the obligation. This does not expressly exclude the possibility of detention in the absence of a prior breach of legal duty. However in the Commission's opinion the mere combination of an unfulfilled

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obligation (even if "specific and concrete"), coupled with the relevant purpose, is not enough for the purposes of Art. 5 (1) (b). To hold that it was would open up a clear possibility of arbitrary detention, thus ignoring the object and purpose of Art. 5 (1) and the importance of the right to liberty in a democratic society (cf. Winterwerp Case, Series A, Vol. 33, p. 16, para. 37).

175. In the Commission's opinion there must accordingly be specific circumstances such as to warrant the use of detention as a means of securing the fulfilment of an obligation before detention on this ground can be justified under Art. 5 (1) (b). In this respect the Commission follows the Court's approach in the Winterwerp Case where it held that the nature and degree of a mental disorder must be such as to warrant detention before a person could be detained as being of "unsound mind" under Art. 5 (1) (f) (sup. cit., p. 18, para. 39). The mere existence of a mental disorder was not itself enough. Similarly the mere fact that an unfulfilled obligation is incumbent on a person is not enough to justify detention in order to secure its fulfilment. In the Commission's opinion the person concerned must normally have had a prior opportunity to fulfil the "specific and concrete" obligation incumbent on him and have failed, without proper excuse, to do so before it can be said in good faith that his detention is "in order to secure the fulfilment" of the obligation. However, there may, in the Commission's opinion, be other limited circumstances of a pressing nature which could warrant detention in order to secure fulfilment of an obligation.

176. Finally, on the general question of interpretation, the Commission notes that the nature of the obligation whose fulfilment is sought must itself be compatible with the Convention. The obligation in question cannot, in particular, consist in substance merely of an obligation to submit to detention.

177. As to the present case, the Commission has first examined the "obligations" arising from the relevant legislation. It notes that Art. 5 (1) of the1976 Order empowers an examining officer to examine persons who have arrived in, or are seeking to leave, Great Britain by ship or aircraft for certain limited purposes. Art. 5 (2) provides that a person examined under Art. 5 (1) may be "required" to submit

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to "further examination". Art. 6 (1) imposes a duty on any person examined to furnish information to the examining officer and Art. 6 (2) imposes further obligations to produce proof of identity etc. and to declare and produce documents of specified descriptions. Art. 7 (2) empowers the examining officer to search any person he examines.

178. In the Commission's view these provisions create an overall obligation, arising in specified circumstances, to submit to "examination". Where a person is examined he is subject to subsidiary obligations to provide information, to submit to being searched etc.

179. The concept of "examination" is not expressly defined in the legislation. However, it clearly includes questioning and searching of the examinee for the purpose of determining the matters set out in sub-paras. (a) - (c) of Art. 5 (1) of the Order. If the person examined is detained it may also include measures such as fingerprinting and photography. In practice it also includes checking of police records and other external investigations. In essence it is thus a process of investigation or a form of security check limited in scope inter alia by the purposes set out in Art. 5 (1) of the Order.

180. Any person who has arrived in or is seeking to leave Great Britain by ship or aircraft is liable to be examined under Art. 5. In practice the powers of examination are operated selectively (see e.g. the Shackleton Report, Chapter 7). It appears that many passengers entering Great Britain from Ireland are not "examined" at all and are not even required to complete landing cards (cf. Art. 8 of the Order). It further appears that the majority of those who are subjected to an initial "examination" are not detained. Arrest and detention is thus not an inherent feature of "examination" as such. It appears that the general practice, as followed in the present case, is that a person is only arrested or detained where, following an initial examination, the examining officer considers that a more prolonged examination is necessary for the purpose of determining the matters set out in Art. 5 (1) of the Order than could reasonably be carried out at the quayside. Arrest and detention are effected to enable that more prolonged examination be carried out.

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181. The Commission finds that the purpose of the detention "pending ... examination" of the present applicants was essentially to secure their compliance with the overall obligation to submit to examination. It was not based on any specific failure on their part to fulfil the legal obligations incumbent on them in connection with their initial examination. The basis of the arrest was not, for instance, any refusal or failure to answer questions or produce evidence of their identity. The examining officer may have suspected that they had not answered his initial questions correctly, but he was not in a position to say with any certainty that this was the case. The purpose of their arrest was not therefore to compel them to rectify any specific prior breach of legal duty. It was to compel them to submit to the further examination which the examining officer considered necessary.

182. In these circumstances the Commission must first consider whether the obligation was sufficiently "concrete and specific" to be capable in principle of falling within the scope of Art. 5 (1) (b), and if so whether there were circumstances sufficient to warrant the applicants' detention in order to secure its fulfilment.

183. The applicants have submitted that in reality the only substantive obligation is to be detained for purposes of interrogation and that there is merely a general duty to co-operate in the investigation process and not a specific and concrete obligation. The Government have suggested that the obligations they have referrred to are specific and concrete and comparable to other obligations to furnish information, such as the obligation to make an affidavit of property in Application No. 5025/71 (Yearbook XIV, p. 692).

184. In the Commission's opinion the obligation to submit to examination is, as a matter of both form and substance, distinct from the obligation to submit to detention. As it has already noted, detention is not an inherent feature of examination (para.176 above).

185. The obligation to submit to examination incumbent on the applicants was not a general obligation arising under criminal or disciplinary law comparable to those considered by the Commission and Court in other cases (see e.g. para. 103 of the Commission's Report in the Guzzardi Case and other cases referred to in para.171 above). It arose only in circumstances specified by law, in this case on the applicants' entry into Great Britain, and on the requirement of an examining officer.

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It can to some extent be seen as comparable in character to other obligations to furnish information in specific circumstances, such as obligations to produce evidence of identity, to make customs declarations or tax returns, or the obligation to furnish an affidavit referred to by the Government. On the other hand in the present case the information to be furnished is not precisely specified in a comparable manner to the above cases. Furthermore the Commission has already noted that "examination" involves a process of investigation going beyond questioning and eliciting information from the person examined (para. 179 above). It is clear that an important part of the process consists in the checking of records and the verification of information given by the person examined. There is therefore also a certain analogy between the detention power at issue in the present case and the powers of initial arrest and detention for interrogation and investigation purposes which were at issue in the case of Ireland v. the United Kingdom (see Report of the Commission, p. 88) and to which the applicants have referred. However, the powers at issue in the present case are more closely circumscribed, inter alia as to their purpose, and neither analogy is thus precise.

186. The obligation to submit to examination does not amount to a general obligation to submit to questioning or interrogation on any occasion, or for any purpose. In this respect it can be contrasted with the power of arrest for interrogation under Regulation 10 of the Special Powers Regulations considered in the Irish inter-State Case (sup. cit.). It is in essence an obligation to submit to a security check (if so required) on entering or leaving Great Britain. The purpose of the check is limited to determining the matters set out in Art. 5 of the 1976 Order. The scope of the obligation is furthermore effectively limited by the limitation set on the duration of detention permitted under Art. 10 of the 1976 Order. At the relevant time the maximum period permitted on the authority of an examining officer was seven days. Whilst this could be extended by the Secretary of State, his power to do so was not exercised in the present case, which in any event concerns a period of some 45 hours only. The Commission is only called upon to express an opinion in relation to the actual period at issue here.

187. Having regard to the submissions made in connection with Art. 5 (1) (c) of the Convention, and the general context of the examination process, the Commission has also considered whether the

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measures in question here were not in reality a preparatory stage of criminal proceedings and "situated in a punitive context", as the Court found to be the case in connection with the measures at issue in the Engel Case (para. 69 of the Judgment, sup. cit.). However, for the reasons which it gives below in connection with the issues under Art. 5 (1) (c) and (f), it has not been established that there was any sufficiently firm suspicion or intention to institute criminal proceedings for it to be said that the arrests fell within the criminal sphere.

188. In all the circumstances, the Commission considers that the obligation imposed on the present applicants to submit to examination was a specific and concrete obligation and that the United Kingdom authorities were therefore in principle entitled under Art. 5 (1) (b) to resort to detention to secure its fulfilment. In reaching this conclusion the Commission has particularly taken into account the fact that the obligation in question arises only in limited circumstances, namely in the context of passage over a clear geographical or political boundary. Furthermore the purpose of the examination is limited and directed towards an end of evident public importance in the context of a serious and continuing threat from organised terrorism.

189. However, as the Commission has already observed, the mere existence of an unfulfilled obligation (albeit "specific and concrete") is not of itself enough to justify arrest or detention under Art. 5 (1) (b). There must be specific circumstances which warrant the use of detention as a means of securing the fulfilment of the obligation. The Commission must therefore still consider whether such circumstances were present in this case.

190. The Commission has already observed that the applicants' detention was not based on any prior voluntary failure to fulfil obligations incumbent on them such as a refusal to co-operate in the initial examination. It reiterates that in the absence of such circumstances detention cannot normally be justified under Art. 5 (1) (b). In general only a person's refusal or neglect to comply with an obligation can justify his detention in order to secure its fulfilment. However as the Commission has indicated above, the possibility that there may be other circumstances justifying detention under this provision is not excluded by the wording of Art. 5 (1) (b) and in its view there may be other limited circumstances of a pressing nature which could justify such detention.

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191. In considering whether such circumstances exist, account must be taken, in the Commission's opinion, of the nature of the obligation. It is necessary to consider whether its fulfilment is a matter of immediate necessity and whether the circumstances are such that no other means of securing fulfilment is reasonably practicable. A balance must be drawn between the importance in a democratic society of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty. The duration of the period of detention is also a relevant factor in drawing such a balance.

192. The Commission has already noted that the obligation imposed on the applicants in the present case was, in essence, an obligation to submit to a security check on entering Great Britain, the scope of the check being limited (broadly speaking) to the prevention of terrorism. The importance in present day conditions of controlling the international movement of terrorists has been widely recognised in Western Europe, in particular by the Parliamentary Assembly of the Council of Europe (1). In the particular context of the United Kingdom there is also evident importance in controlling and detecting the movement of terrorists not only between the United Kingdom and the Republic of Ireland but also between Great Britain and Ireland as a whole, including Northern Ireland. The necessary checks must obviously be carried out as the person concerned enters or leaves the territory in question and there is a legitimate need to obtain immediate fulfilment of the obligation to submit to such checks.

193. The Commission further notes that, from the information before it, it appears that the powers of examination are, so far as reasonably practicable, exercised without resort to detention, the majority of persons examined being subjected only to a relatively short examination at the port of entry or departure. It is true that where the authorities consider a prolonged examination to be necessary, detention is apparently used invariably. There is no provision for release on bail pending examination, in contrast to the position under the normal immigration legislation in the United Kingdom (2). However, release on bail scarcely seems compatible with the effective operation of the limited security check at issue in the present case.

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(1) See Report of Political Affairs Committee of 5 December 1978, Doc. 4258, para. 17; Recommendation 852 (1979), para. 15 (ix).

(2) Immigration Act 1971, Schedule 2, Art. 22 (1).

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194. It takes into account furthermore the practice whereby an examining officer does not exercise the powers of arrest and detention unless he is left in some suspicion as to the matters specified in Art. 5 (1) (a) - (c) of the Order. In the context of such a security check it is obvious that a person engaged in terrorist activity is unlikely openly to refuse to reply to questions or otherwise fail to comply with the obligations incumbent on him. However he may well give false or incomplete information. Accordingly in order effectively to secure the fulfilment of the obligation in question it may therefore be necessary to resort to detention even where it cannot be said with certainty that there has already been any culpable failure on the part of the detainee to fulfil the obligations incumbent on him.

195. The Commission finds no indication that the detention of the present applicants was arbitrary or effected for any improper purpose. It accepts that it was based on the examining officer's appreciation on the basis of the information available to him, that there was a necessity to examine them in greater depth than was practicable at the port. In the exceptional context of the case it concludes that there were thus sufficient circumstances to warrant their arrest and detention for some 45 hours for the purpose of securing fulfilment of the obligation incumbent on them to submit to examination.

196. It is not in dispute that the arrest and detention were in accordance with domestic law and the Commission finds nothing to suggest that it was not both "in accordance with a procedure prescribed by law" and "lawful" as these concepts in Art. 5 (1) have been interpreted by the Court (see e.g. Winterwerp Case, sup. cit., paras. 39 and 45). It concludes that their arrest and detention were justified under Art. 5 (1) (b) in order to secure the fulfilment of an obligation prescribed by law.

Art. 5 (1) (c) and (f)

197. The Commission has also considered whether the arrest and detention were justified under Art. 5 (1) (c) or (f). However, in its view the purpose of the detention was essentially to secure the applicants' fulfilment of the obligation to submit to examination. The examination might or might not have revealed grounds for criminal proceedings or exclusion proceedings, but in the event did not do so.

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198. As to Art. 5 (1) (c) the Commission also notes that neither suspicion of an offence nor any belief that a person is about to commit an offence is a necessary pre-condition for a lawful arrest under the 1976 Order. Whilst the applicants' arrest and detention was apparently prompted by the existence of some form of suspicion against them, the Commission does not consider in all the circumstances that it is established that there was any sufficiently precise suspicion or belief to satisfy the requirements of Art. 5 (1) (c). Furthermore, the Commission does not consider that the existence of any sufficiently firm intention to bring the applicants before a "competent legal authority" on the basis of such a reasonable suspicion or belief has been established.

199. As to Art. 5 (1) (f) the Commission notes that under the legislation only the Secretary of State has power to make an exclusion order. No application had been made to him by the police for such an order and the appliants were detained pending their examination and not pending consideration of the question whether exclusion orders should be made against them. Nor were they detained pending removal. Accordingly even if any of the various forms of "exclusion" could be considered as equivalent to "deportation" there was, in the Commission's opinion, no sufficiently firm intention to operate the relevant powers against the applicants for it to be said that the action taken against the applicants was taken with a view to their deportation. Furthermore, even though one purpose of examination under the Order is to establish whether the person examined is already subject to an exclusion order, it has not been suggested that in the present case the applicants' arrest and detention was based on any belief that they were subject to exclusion orders. It is not therefore shown that its purpose was to prevent them making an "unauthorised entry".

200. In short, the Commission considers that the applicants were detained for a form of security check or screening process. As the applicants have put it, the measures were one step back from criminal or deportation proceedings. The authorities' intentions had not, in the Commission's view, developed sufficiently to bring their detention within the scope of sub-para. (c) or (f) of Art. 5 (1).

Art. 5 (3)

201. Since it thus considers that the detention did not fall within the scope of Art. 5 (1) (c), no question arises under Art. 5 (3).

Conclusion

202. The Commission concludes by thirteen votes against one that the facts of the case do not disclose any breach of Art. 5 (1) or Art. 5 (3) of the Convention.

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D. Article 5 (2) - the reasons given for the arrests

203. Art. 5 (2) of the Convention is in the following terms:

> "2. Everyone who is arrested shall be informed promptly in a language which he understands, of the reasons for his arrest and of any charge against him."

204. The applicants submit that the reasons which they were given for their arrests were not sufficient to satisfy the requirements of this provision since they were not informed of the grounds for suspicion against them. The Government maintain that the reasons given were sufficient.

205. The Commission notes that at the moment of the arrests the applicants were informed, in general terms, of the legal basis for their arrest and were told that they were to be fingerprinted, photographed, questioned and "otherwise checked up on", (see para. 53 above). In substance this was a description of "examination" under the 1976 Order. When they arrived at the Bridewell Police Station they were given in written form precise details of the legal basis for their detention and of its purpose, "pending further examination", (para. 55 above). This written information was given them within an hour, at the most, of the actual arrests.

206. The Commission is of the opinion that this information was given sufficiently "promptly" for the purposes of Art. 5 (2). This has not been disputed. The only question at issue is its sufficiency.

207. The Government have suggested that the reasons for the arrests would also have become apparent to the applicants from the questions they were asked. Having regard to the information available as to the applicants' interrogation on the following day (paras. 58-60 above), the Commission does not consider it established that any further information of substance became available to them at that stage. It will therefore consider whether the information given initially was sufficient in itself.

208. The Commission recalls that it has recently stated that the purpose of Art. 5 (2) is to inform a detainee adequately of the reason for his arrest "so that he may judge the lawfulness of the measure and take steps to challenge it if he sees fit, thus availing himself of the right guaranteed by Art. 5 (4)" (Application No 6998/75, X v. the United Kingdom, Report of the Commission adopted on 16 July 1980).

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In the case of Caprino v. the United Kingdom, to which the Government have referred, the Commission found that it was sufficient that the applicant, detained under Art. 5 (1)(f), was informed of the legal basis for his detention as well as "the essential facts relevant to the lawfulness of his detention", (Decision of 3 March 1978).

209. There is no dispute in the present case that the applicants were sufficiently informed of the legal basis for their detention. The sole question is whether they should have been informed of the grounds for suspicion against them. The Commission has already observed in its decision on admissibility that such information does not appear relevant to the lawfulness of their detention in domestic law, since the existence of "suspicion" is not a prerequisite for a lawful arrest under the 1976 Order. Equally the existence of "suspicion" is not a substantive requirement of Art. 5 (1)(b) of the Convention. Only Art. 5 (1)(c) requires it and in the Commission's opinion the applicants' detention was not covered by that provision.

210. In the present case the applicants were informed of the nature of the obligation incumbent on them. In the written notifications served on them they were expressly required to submit to "further examination". Furthermore, as a matter of substance, the Commission considers that the information given them was quite sufficient in the circumstances to make it clear that this consisted of a form of security check to establish whether they were involved in terrorism.

211. The applicants were, in the Commission's opinion, thus sufficiently informed of the legal basis for the detention in domestic law and of the substantive reasons for their detention under Art. 5 (1)(b) of the Convention. They were given the essential facts relevant to the lawfulness of their detention under both domestic law and the Convention. That is sufficient for the purposes of Art. 5 (2).

Conclusion

212. The Commission concludes by thirteen votes with one abstention that there has not been a breach of Art. 5 (2) of the Convention in the present case.

E. Art. 5 (4) of the Convention - review of the lawfulness of detention

213. Para. (4) of Art. 5 of the Convention is in the following terms:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

214. In principle it was open to the applicants in the present case to apply for habeas corpus. If successful, such an application would have resulted in their release. However they maintain that there was an administrative practice whereby they were prevented from obtaining access to this remedy and that in any event it would not have provided an effective review of "lawfulness" in the case of detention under the 1976 Act.

215. The Commission finds that it is not established that the present applicants were prevented from applying for habeas corpus during their detention. Whilst, as has been found (see para. 70 above), two of them were prevented from contacting their wives, it does not appear from their statements that any of them asked to contact a lawyer or otherwise intimated that they wished to take steps to challenge the lawfulness of their detention. Accordingly the suggestion that they were prevented, by an administrative practice or otherwise, from obtaining access to this remedy is not substantiated.

216. The applicants have also submitted that such proceedings would not have provided an effective review of the lawfulness of their detention. The Commission recalls that it has held that Art. 5 (4) requires that there should be a judicial review sufficient in scope to cover both the formal legality of the detention in domestic law and the substantive justification for the detention under Art. 5 (1) of the Convention (see e.g. Application No. 6998/75, X. v. the United Kingdom, Report of the Commission adopted on 16 July 1980, paras. 125-133). However in the Commission's opinion, the nature of the review necessary must depend on the nature of the detention, just as the nature of the procedural guarantees necessary to satisfy Art. 5 (4) may also vary according to the type of detention (cf. De Wilde, Ooms and Versyp Cases, Series A, No. 12, paras. 76 and 78; Winterwerp Case, Series A, No. 33, para. 57).

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217. The Commission finds no reason to suppose that the review of lawfulness available in habeas corpus proceedings would as a matter of principle have been insufficient in the context of the present case, which, as the Commission has found, concerns detention falling within the scope of Art. 5 (1) (b) of the Convention. In particular, it finds no reason to doubt that the courts could have examined whether the applicants had been lawfully required to submit to examination and, as a matter of substance, whether they were detained for the purpose of securing fulfilment of that obligation, that being the substantive justification for the detention under Art. 5 (1) (b). It is true that the extent to which the courts could have reviewed the background to the applicants' arrests, including such matters as the justification for any suspicion against them, may have been limited. However such matters are not relevant to the lawfulness of their detention under the relevant domestic law or under Art. 5 (1) (b) of the Convention.

218. Conclusion

The Commission concludes by twelve votes with two abstentions that there has not been a breach of Art. 5 (4) of the Convention in the present case.

F. Art. 5 (5) of the Convention - the existence of an enforceable right to compensation

219. Para. (5)of Art. 5 of the Convention is in the following terms:

> "5. Everyone who has been the victim of arrest or detention in contravention of this Article shall have an enforceable right to compensation."

220. The applicants maintain that their arrest and detention was in breach of paras. (1) - (4) of Art. 5 and that, because they had no enforceable right to compensation in respect of their detention under the domestic legal system, there was a breach of Art. 5 (5). There is no question in the present case of any domestic court having found the applicants' arrest or detention to have been contrary to either domestic law or the Convention (cf. Application No. 6821/74, Hüber v. Austria, 6 Decisions and Reports, p. 65). The Commission has expressed its opinion that there has been no violation of Art. 5 (1) - (4) and it follows from that conclusion that the applicants have no right to compensation under Art. 5 (5), not having been victims of arrest or detention in contravention of Art. 5.

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221. Conclusion

The Commission concludes by thirteen votes with one abstention that there has not been a breach of Art. 5 (5) in the present case.

G. Art. 8 of the Convention - searching, questioning, fingerprinting and photography during the applicants' detention and subsequent retention of relevant records

222. Art. 8 of the Convention is in the following terms:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
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> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

223. The applicants maintain that certain measures taken during their detention were in violation of their right to respect for private life, as guaranteed by the above provision. They complain in this respect of having been searched, questioned about their "private lives", fingerprinted and photographed. They also complain of the retention by the authorities, following their release, of records of their examination, including in particular their fingerprints and photographs. They maintain that the retention of such records is also in breach of their right to respect for private life under Art. 8. The respondent Government maintain, with regard to both the measures taken during the applicants' detention and the subsequent retention of records, firstly that there has been no interference with the applicants' right to respect for private life under Art. 8 (1) and secondly that the authorities' actions were in any event justified under Art. 8 (2).

224. The Commission has first considered whether the measures taken during the applicants' detention were themselves compatible with Art. 8. It recalls that it has previously recognised that measures such as the search of a person's motor car (1), or the temporary

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(1) Application No. 5488/72, X. v. Belgium, Collectionof Decisions 45, p. 20.

confiscation of personal papers (1), may involve interference with the right to respect for private life. In the light of this case-law it accepts that some at least of the measures at issue in the present case, being similar in character, involved interference with the applicants' right to respect for private life. However the measures at issue all formed an integral part of the applicants' "examination" under the 1976 Order. The Commission finds nothing to indicate that they exceeded what was necessary for the purposes of that examination, namely (in substance) to identify the applicants and ascertain whether or not they were involved in terrorist activities. In particular the applicants' account of the questions put to them (see paras. 58-60 above) does not disclose that the questioning went beyond what was proper in the circumstances. It appears on the contrary to have been somewhat cursory. The measures were authorised by the 1976 legislation. In all the circumstances the Commission is satisfied that, whilst they may have involved interference with the rights guaranteed by Art. 8 (1), they were justified under Art. 8 (2) as being "in accordance with the law and ... necessary in a democratic society ... for the prevention of ... crime".

225. Conclusion

The Commission concludes by a unanimous vote that the searching, questioning, fingerprinting and photography of the applicants during their detention were not in breach of Art. 8 of the Convention.

226. However the question remains whether the retention by the police of records of the applicants' examination after their release was in breach of Art. 8. In this context the applicants have complained primarily of the retention of their fingerprints and photographs. However they have also specified in the course of their submissions, both at the hearing on admissibility and merits and in their written observations on the merits, that they are also concerned that information obtained from them during their examination is retained in police records. The respondent Government have not denied this. In these circumstances the Commission considers that it is called upon to consider whether the retention in police records of the applicants' fingerprints and photographs and information given by them during their examination is compatible with Art. 8. However in the context of the present case it is not called upon to make any general examination of the extent of information held in police records or the use which is made of it. Nor does the present case concern records obtained by the use of secret surveillance measures such as those at issue in the Klass case, to which the applicants have referred (cf. also Application No. 8290/78, A. and others v. the Federal Republic of Germany, 19 Decisions and Reports, p. 176). The Commission is here concerned solely

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(1) Application No. 6794/74, X. v. the Federal Republic of Germany, 3 Decisions and Reports, p. 104.

with the retention of the information which the applicants themselves provided during their examination, together with fingerprints and photographs.

227. The Commission considers that it is open to question whether the retention of fingerprints, photographs and records of such information amounts to an interference with the applicants' right to respect for private life under Art. 8 (1) of the Convention. However it finds it unnecessary to decide this matter in the light of the conclusion which it has reached under Art. 8 (2).

228. As to Art. 8 (2), the first question which arises is whether the retention of such records is "in accordance with the law". The applicants submit that it is not because the 1976 Act and Order merely authorise the taking of fingerprints, photographs etc. and there is no legal provision authorising their subsequent retention or regulating their subsequent use. They do not, however, dispute that, having lawfully obtained the relevant material, the authorities are entitled under domestic law to retain it. In the Commission's opinion the 1976 Act and Order, which lay down the specific circumstances in which fingerprints, photographs and other information may be obtained, provide a sufficient legal basis for the subsequent retention of such material, which is therefore "in accordance with the law" for the purpose of Art. 8 (2).

229. The next question to be considered is whether the retention of such records is "necessary in a democratic society" in the interests of "national security or public safety" or for the "prevention of disorder or crime". In this respect the Commission recalls that in Application No. 1307/61 (X. v. the Federal Republication of Germany, Collection of Decisions 9, p. 53), it held that "the keeping of records, including documents, photographs and fingerprints, relating to criminal cases of the past is necessary in a modern democratic society for the prevention of crime and is therefore in the interests of public safety". It found that the retention of such records in that case was justified under Art. 8 (2). It notes that the applicant in that case had been tried on a criminal charge in connection with which the relevant records had been compiled, although ultimately his conviction was quashed on appeal.

230. In the present case no criminal proceedings were brought against the applicants and, furthermore, it is not established that there was any "reasonable suspicion" against them in relation to any specific offence (see para. 198 above). However, the Commission

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accepts that the specific purpose of retaining the records in question is the prevention of terrorism. In particular it notes the use which is made of fingerprints and photographs for identification purposes and the fact that where the arrestee does not have a criminal conviction such records are separated from those kept under the normal system of criminal records and reserved exclusively for use in the campaign against terrorism (see paras. 48 and 49 above). The Commission is aware of the critical importance which intelligence material and forensic evidence may have in the detection of those responsible for terrorist offences (see e.g. Shackleton Report, paras. 71-73). Bearing in mind also the serious threat to public safety posed by organised terrorism in the United Kingdom, the Commission considers that the retention for the time being of records such as those at issue in the present case can properly be considered necessary in the interests of public safety and for the prevention of crime.

231. In reaching this conclusion the Commission recognises that this involves the retention of records in respect of some persons against whom no suspicion exists following their release. It approaches the present case on the basis that that is the case in respect of the applicants (cf. para. 158 above). However, taking into account the nature of the records at issue, it must balance what, in its view, is at most a relatively slight interference with the applicants' right to respect for their private life against the pressing necessity to combat terrorist activity.

Conclusion

232. The Commission concludes by eleven votes against one with two abstentions that the retention after the applicants' release of their fingerprints, photographs and information obtained during their examination was not in breach of Art. 8 of the Convention.

H. Arts. 8 and 10 of the Convention - contact of MM. McVeigh and Evans with their wives

233. In their applications MM. McVeigh and Evans maintained that their right to respect for family life was breached since they were prevented from joining their wives during their detention. However their separation from their wives was the direct and inevitable result of the fact that they were detained. The Commission has already held that the detention was as such compatible with the Convention and in these circumstances it does not consider that the applicants' separation from their wives can be considered as an interference with their right to respect for family life under Art. 8 (1).

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Conclusion

234. The Commission concludes by a unanimous vote that the fact that the applicants McVeigh and Evans were prevented from joining their wives did not involve any breach of their rights under Art. 8 of the Convention.

235. MM. McVeigh and Evans also maintain that the refusal to allow them to contact their wives was a breach of their right to respect for family life as guaranteed by Art. 8 of the Convention. The Commission has already found that such refusal did occur (para. 70 above). The respondent Government maintain that even if that was the case, it did not amount to an interference with the applicants' rights under Art. 8 (1) and was in any event justified under Art. 8 (2).

236. The Commission notes as a preliminary matter that Mr. McVeigh's complaint concerns attempts to contact his "common-law wife". It has not been disputed that his relationship with her was such as to fall within the field of "family life" covered by Art. 8 (1). In any event the applicants' attempts to contact their wives also fell, in the Commission's opinion, within the field of "private life" and "correspondence" covered by Art. 8 (1) (see Klass Case, Series A, Vol. 28, p. 21, para. 41).

237. The Commission has next considered whether the authorities' action amounted in the circumstances to an "interference" with the applicants' exercise of their rights under Art. 8 (1). It is true that the applicants' detention, and the denial of contact with their wives, lasted only for a relatively short time. However at the time when a person is arrested his ability to communicate rapidly with his family may be of great importance. The unexplained disappearance of a family member even for a short period of time may provoke great anxiety. The situation of the present applicants cannot therefore be compared to that of the applicant in Application No. 6870/75 (10 Decisions and Reports, at p. 65), who was already detained and had various means of communicating with his family at his disposal. The present applicants had no means at all of communicating their whereabouts to their wives and in the Commission's opinion the authorities' failure to allow them the means of doing so amounted, in the circumstances, to an interference with their exercise of the right to respect for private and family life and correspondence guaranteed by Art. 8 (1).

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238. The Commission has next considered whether that interference was justified under Art. 8 (2). The respondent Government submit that, if there was an interference, it was justified as being "in accordance with law" and necessary in a democratic society for the prevention of disorder or crime, for the protection of the rights and freedoms of others and in the interests of national security. Essentially they submit that if a terrorist suspect is allowed immediately to intimate the fact of his arrest to outsiders, there is or may be a risk that accomplices will be alerted and may escape, destroy or remove evidence, or commit offences.

239. The Commission recognises that in certain circumstances the existence of such risks may justify refusing for a time to allow an arrestee to contact the outside world. However this is not always the case and the respondent Government themselves do not appear to suggest that it is. As a general matter the Commission agrees with the following statement in para. 147 of the Shackleton Report:

> "The effect on the family of the detained person must not be overlooked. Unless there are specific reasons, relating to the danger that accomplices will be alerted, the police should fulfil any request from the person detained that his family be notified of his arrest and should be prepared to answer any reasonable request for information about him from his close relatives throughout the period."

Unless there are such reasons it cannot, in the Commission's opinion, be considered "necessary" under Art. 8 (2) to deny an arrestee the possibility of notifying his family of his whereabouts. Whilst the Government have referred in general terms to the nature of the risks which may arise from allowing such notification, there is no evidence before the Commission to suggest that there were specific reasons why in the present case the wives of the two applicants could not be notified of their whereabouts. In the Commission's opinion the interference with the applicants' rights under Art. 8 (1) is not therefore shown to have been "necessary" for any of the purposes mentioned in Art. 8 (2).

Conclusion

240. The Commission concludes by twelve votes against two that the applicants McVeigh and Evans were victims of a breach of Art. 8 of the Convention through having been denied the possiblity of contacting their wives throughout the period of their detention.

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241. Having reached the above conclusion under Art. 8 of the Convention the Commission considers it unnecessary to decide whether the same facts also involved a violation of Art. 10.

Secretary to the Commission

(H.C. KRÜGER)

Acting President of the Commission

(C.A. NØRGAARD)

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Dissenting Opinion by Mr. Trechsel on the complaints under Art. 5 of the Convention

To my regret, I am not able to agree with the finding of the majority on the compatibility of the detention complained of in the present case with Art. 5 (1) (b). Nor do I consider that it fell within any provision of Art. 5 (1) of the Convention.

Art. 5 (1) (b) permits "lawful arrest or detention" in order to "secure the fulfilment of any obligation prescribed by law". In the Engel Case, the Court held that these words only cover "cases where the law permits the detention of a person to compel him to fulfil a specific and concrete obligation which he has until then failed to satisfy" (Judgment, para. 69).

I quite agree with the finding of the majority according to which "the person concerned must normally have had a prior opportunity to fulfil the 'specific and concrete' obligation incumbent on him and have failed, without proper excuse, to do so before it can be said in good faith that his detention is 'in order to secure the fulfilment' of the obligation", (para. 175). However, I find it dangerous to extend the permission to arrest and detain "to other limited circumstances of a pressing nature" (loc. cit.).

In the present case, the obligation at issue was that to submit to "further examination". In the view of the majority, this "clearly includes questioning and searching" (para. 179). With regard to searching, it is difficult to conceive how it could necessitate deprivation of liberty in excess of, at most, a few hours. As far as questioning is concerned, however, it is very doubtful whether this could involve a "specific and concrete" obligation to disclose information. Of necessity, the information to be sought by questioning cannot be specified in advance. The course of the interview will depend on the answers obtained and the knowledge of the person concerned, both of which are unknown beforehand. In the particular case of the applicants, regard must further be had to the fact that they were identified as employees of the Post Office, living together with family members at normal addresses. No reasons have been submitted to suggest that it would not have been possible to request further information from them at a later stage, i.e. after letting them return to their homes.

Detention for the purpose of questioning raises an additional problem in that the persons concerned might have knowledge of facts the disclosure of which would involve self-incrimination or would at least be likely to raise suspicion against them. They would then be in a very serious conflict having to decide on one of the following three courses of action, each of them harmful or dangerous for themselves: withhold information and accept detention; disclose information truthfully and risk immediate prosecution; give false information and risk prosecution at a later stage.

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This aspect establishes indeed the general proximity of arrest and detention such as complained of in the present case to that envisaged in Art. 5 (1) (c). However, in the applicants' cases, no "reasonable suspicion" has been found and the legislation did not require the existence of any suspicion at all. It appears thus that the deprivation of liberty imposed upon them in fact amounted to what is sometimes referred to as a "fishing expedition": measures of coercion which are normally admissible only on condition that there exists reasonable suspicion against the person concerned are applied not in order to ascertain whether such suspicion is well-founded, but in order to find out whether there are any grounds for suspicion at all.

However, this is a procedure which the Convention clearly wanted to outlaw, as the reference to "reasonable suspicion" / "raisons plausibles de soupçonner" indicates. The condition thus set ought not to be frustrated by what I consider to be an excessively broad construction of Art. 5 (1) (b).

I therefore conclude that, in the present case, there has been a violation of Art. 5 (1) of the Convention.

As the case was discussed in the Commission on the basis of the majority opinion under Art. 5 (1), I have abstained in the vote on other questions related to the legality of the detention (i.e. the questions raised under Arts. 5 (2), (4) and (5)).

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Dissenting Opinion of Mr. Klecker relating to the complaint under Art. 8 of the Convention concerning the retention of records of the examination after release of the applicants

The majority of the members of the Commission have found that the searching, questioning, fingerprinting and photography of the applicants and the subsequent retention of relevant records was not in breach of Art. 8 of the Convention.

In my opinion, the five elements mentioned above call for distinct consideration.

Searching and questioning are security control measures. Fingerprinting and photography are used for identification purposes. The retention of fingerprints, photographs and other records is a different thing. Once the security and identification measures have been taken and, as in the case here, no substantiation of suspicion has resulted and the persons initially suspected have been released, the question arises how retention of records can be justified.

While I am not contesting the majority's opinion that there was a sufficient legal basis for the retention of the material, I have no concrete elements at hand on the basis of which I could say that it was necessary to retain the material in question.

The majority of the Commission find that the retention of the records could be considered necessary in the interests of public safety and for the prevention of crime. They say that "in reaching this conclusion the Commission recognises that this involves the retention of records in respect of some persons against whom no suspicion exists following their release. It approaches the present case on the basis that that is the case in respect of the applicants". The majority refers to para. 158 of the Report where it is said that the Commission "approaches the case on the basis that the applicants were, as stated by them, innocent holidaymakers".

Now, in the course of the examination of the case, no element appeared which could show that the applicants, at the time of their release, were not completely cleared of any suspicion. Furthermore, I should recall that no substantial safeguards in relation to police records seem to exist in the United Kingdom, which is why the Committee on Data Protection has recommended that such safeguards be imposed. In the absence of adequate safeguards and the applicants being cleared of suspicion, the retention of the material obtained as a result of detention cannot be justified under Art. 8 (2).

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Separate Opinion of MM. Klecker, Tenekides, Melchior and Carrillo on the complaint under Art. 8 of the Convention relating to the contact of MM. McVeigh and Evans with their wives

We form part of the majority of the Commission which has expressed the opinion that Art. 8 was violated in the present cases insofar as the applicants were not allowed to contact their wives during their detention.

We consider the reasoning in para. 237 of the Report to be satisfactory from a technical point of view. The Government have not in fact given specific reasons to justify not authorising these contacts, and in particular reasons why it was necessary that the applicants' wives should not be informed of their arrest and detention.

Nonetheless this attitude was very probably based on the consideration that if the persons interrogated were members of a terrorist organisation, their close relatives would be likely to be aware of this. There would be a serious risk that they could themselves be members of the organisation and that, on being informed of these arrests, they would take steps to thwart any police action which might be based on information obtained from the persons under interrogation.

In our view such reasoning can only be valid in relation to the first hours after the arrest. It ceases to be so once the detention has lasted a substantial number of hours and the absence of the spouse becomes "abnormal". In such a situation, if the wives and family are part of a terrorist organisation, they will be led to suppose that the abnormal absence is probably caused by an arrest. Accordingly, in face of the disappearance of their relatives, they would then take the "security" measures required to protect the interests of the terrorist organisation.

It is not improbable either that, in the case of an efficient terrorist organisation, an arrest would immediately be brought to the notice of the organisers through the use of surveillance agents.

In any case it appears to us, for the reasons given in para. 237 of the Report, supplemented by those set out above, that the refusal to allow these arrestees contact with their families cannot be considered justified under Art. 8 (2) of the Convention after the expiry of a number of hours (e.g. eight hours), following the arrests.

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