



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF MAGEE v. THE UNITED KINGDOM

(Application no. 28135/95)

JUDGMENT

STRASBOURG

6 June 2000

FINAL

06/09/2000

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.

In the case of Magee v. the United Kingdom,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Sir Nicolas BRATZA,

Mrs H.S. GREVE,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 September 1999 and 16 May 2000,

Delivers the following judgment, which was adopted on that last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 28135/95) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Irish citizen, Mr Gerard Magee (“the applicant”), on 22 May 1992.

2. The applicant, who was granted legal aid, was represented by Madden & Finucane, a firm of solicitors practising in Belfast. The Government of the United Kingdom (“the Government”) were represented by their Agent, Mr C. Whomersley, of the Foreign and Commonwealth Office, London.

3. The applicant alleged, *inter alia*, that he was ill-treated while in detention and that he was denied a fair trial.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

6. By a decision of 14 September 1999, the Chamber declared the application partly admissible¹.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

1. *Note by the Registry*. The Court's decision is obtainable from the Registry.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 16 December 1988, early in the morning, the applicant was arrested at his home under section 12 of the Prevention of Terrorism Act 1984 (“the 1984 Act”) in connection with an attempted bomb attack on military personnel. The applicant was taken to Castlereagh police station. He claims that on arrival he immediately requested to see his solicitor. Access was delayed pursuant to section 15 of the Northern Ireland (Emergency Provisions) Act 1987 (“the 1987 Act”). At 9.15 a.m. the applicant was examined by a doctor who advised him that if he had any complaints to make he should tell the doctor when he made his round the following morning. The applicant was cautioned pursuant to Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 (“the 1988 Order”). Unfamiliar with this new law, the applicant again requested a consultation with a lawyer and this request was refused.

9. On the same day the applicant was interviewed five times by two teams of two detectives. These interviews took place between 10.55 a.m. and 1 p.m., 2 p.m. and 4 p.m., 4 p.m. and 6 p.m., 7.35 p.m. and 9.30 p.m., and 9.30 p.m. and 12 midnight.

10. At 8.21 a.m. on 17 December 1988, the applicant complained to the same doctor he had seen the day before of ill-treatment during the second and third interviews on the previous day. The doctor recorded in his notes that the applicant had alleged that he had been repeatedly slapped and occasionally punched in the back of the head during the second and third interviews and that he had been punched a few times in the stomach. The doctor gave the applicant two tablets (a mild analgesic) and prescribed four such tablets a day if required. Pursuant to this complaint, at 9.15 a.m. a police inspector visited the applicant's cell and took note of the applicant's complaints.

11. Subsequently, the applicant's sixth, seventh and eighth interviews took place between 9.30 a.m. and 1 p.m., 2 p.m. and 4.20 p.m., and 7.30 p.m. and 12 midnight. During the sixth interview the applicant broke his silence and gave detailed answers to a number of questions admitting to his involvement in the assembly and planting of the bomb. During the seventh interview the applicant signed a lengthy statement which described in considerable detail his part in the conspiracy to plant and detonate the bomb.

12. At 8.28 a.m. on 18 December 1988, the applicant was visited by the same doctor who asked the applicant if he had any further allegations of ill-treatment and the applicant replied that he had not. The applicant was then interviewed about another matter between 10 a.m. and 12.45 p.m. At 1 p.m.

the applicant was allowed to consult with his solicitor, who made notes on the applicant's allegations of ill-treatment. The solicitor chose not to pass these complaints on to the police. The applicant was then interviewed for the last time between 2 p.m. and 5 p.m. about an unrelated matter. The applicant was medically examined that evening at 8.20 p.m. by another doctor whose notes indicated that the applicant had made "no allegations of ill-treatment since he had been last seen by a doctor". That doctor also noted that there was no sign of injuries.

13. On 19 December 1988 the applicant was taken to another police station where he was given a medical examination by another doctor. That doctor's note records the applicant's detailed allegations of assaults and ill-treatment which allegedly took place on 16 December 1988. No objective evidence of injury was noted.

14. On 19 December 1988 the applicant, along with others, was charged at Belfast Magistrates' Court with conspiracy to cause explosions, possession of explosives with intent, conspiracy to murder and membership of the Irish Republican Army.

15. On 3 March 1989 the applicant, through his solicitor, made an official written statement to the Complaints and Discipline Branch of the Royal Ulster Constabulary complaining about his ill-treatment by one team of two detectives while at Castlereagh police station.

16. On 17 September 1990 the trial of the applicant and his co-accused began at Belfast Crown Court before a single judge sitting without a jury. The applicant pleaded not guilty. The prosecution case was based on the admissions made by the applicant in interview and, in particular, the written statements signed by him.

17. On 3 October 1990, when the prosecution were about to lead evidence based on the applicant's admissions and statement made during questioning, the applicant applied under section 8 of the Northern Ireland (Emergency Provisions) Act 1978 (as amended) to have the admissions and statement made during questioning excluded on the basis of his alleged ill-treatment. A *voir dire* (submissions on a point of law in the absence of the jury) began and the applicant gave evidence as to his treatment, particularly by one team of two detectives during interviews nos. 2, 4 and 6 while in Castlereagh police station. Electrostatic Document Analysis ("ESDA") evidence was also led which the applicant submitted demonstrated glaring defects in the authentication of the interview notes which recorded his responses to the detectives' questions. All the relevant witnesses, including the applicant, the police officers alleged to have been involved in the ill-treatment and the doctors who had seen the applicant, gave evidence. The *voir dire* ended on 23 October 1990 when the trial judge rejected the application, admitted the applicant's admissions and statement into evidence and adjourned his detailed judgment in these respects.

18. The applicant did not subsequently give evidence at the trial. However, the trial judge cautioned the applicant, pursuant to Article 4 of the 1988 Order, as regards adverse inferences which could be drawn from this failure to give evidence.

19. On 21 December 1990 the trial judge gave judgment.

20. He first outlined his detailed reasoning behind his decision further to the *voir dire*. He noted that the only evidence against the applicant was the admissions and statement made while in custody at Castlereagh police station and that there was no forensic evidence against him. However, it was also noted that the applicant's admissions and statement were entirely consistent with the evidence presented in relation to others charged (and later convicted) with offences arising out of the same incident. The trial judge summarised the applicant's evidence of ill-treatment and this summary was later accepted on appeal by the applicant as constituting an accurate account of his evidence in this respect.

21. The trial judge then commented on that evidence. He noted, *inter alia*, that the applicant did not mention the names of or attempt to describe the two detectives in respect of whom he complained to the doctor on the morning of 17 December 1988; that the applicant had not mentioned to the doctor on that morning the "cigarette treatment", which the applicant had submitted during the *voir dire* was the treatment which frightened him most; that there were inconsistencies in the accounts of ill-treatment given by the applicant to the doctor on that morning and his evidence at trial; that not one single objective sign of the ill-treatment which the applicant alleged was found by any of the doctors who examined the applicant; and that on the morning of 18 December 1990, the applicant did not make any complaint about ill-treatment despite the fact that he claimed he had suffered the worst treatment of all during the previous day.

22. Although there had been a period when the monitoring screens (which relayed pictures from cameras in the interview rooms to a central control room) had not been monitored by the duty inspector on that Saturday morning, the trial judge found that this did not coincide with the applicant's evidence as to when he was ill-treated on that day and the trial judge found it impossible to accept that ill-treatment of the nature alleged by the applicant could have gone on without it being picked up by the cameras in the room where the applicant was questioned. On the question of general credibility the judge found that the applicant had repeatedly lied to the court, whereas the detectives involved were not at all shaken by a rigorous cross-examination in their firm denials of the allegations made by the applicant. As to the ESDA evidence, the trial judge found that it did not substantiate the applicant's submission as to the lack of authenticity of the interview notes.

23. Accordingly, the trial judge rejected the applicant's allegations of ill-treatment and found that there was no reason to exclude the applicant's

admissions or statement made during his detention in Castlereagh police station. As to the probative value of the applicant's statement, the trial judge found that it was sufficiently detailed to establish the several charges against the applicant and that he was fully entitled to convict the applicant on that basis. On 11 January 1991 the applicant was sentenced to twenty years' imprisonment.

24. On 8 February 1993 the applicant's appeal against conviction, challenging the trial judge's conclusions as to the allegations of ill-treatment and as to the ESDA evidence, was heard by the Court of Appeal of Northern Ireland. That court noted that in such cases the question to be answered is whether the court is satisfied that it is not a reasonable possibility that the accused was ill-treated. It noted, *inter alia*, that the trial judge had had the great advantage of seeing the applicant give evidence, that both an accused and the police officers involved can equally have an incentive to lie and that many facts are capable of being looked at in two or more ways, but they must be considered sensibly and realistically. Having reviewed the applicant's evidence and the trial judge's conclusions in that respect, that court concluded that it was satisfied that the applicant had not been ill-treated and that his conviction was neither unsafe nor unsatisfactory. Accordingly, on 16 June 1993 the applicant's appeal was rejected.

25. On 17 December 1993 the applicant's appeal against his sentence was rejected.

II. RELEVANT DOMESTIC LAW

A. Provisions governing inferences which may be drawn from an accused's silence

26. The relevant parts of Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 provide:

“Circumstances in which inferences may be drawn from the accused's failure to mention particular facts when questioned, charged, etc.

(1) Where, in any proceedings against a person for an offence, evidence is given that the accused -

(a) at any time before he was charged with the offence, on being questioned by a constable trying to discover whether or by whom the offence has been committed, failed to mention any fact relied on in his defence in those proceedings; or

(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, paragraph (2) applies.

(2) Where this paragraph applies -

...

(c) the court ... in determining whether the accused is guilty of the offence charged,

may -

(i) draw such inferences from the failure as appear proper;

(ii) on the basis of such inferences treat the failure as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

...”

27. The relevant parts of Article 4 of the 1988 Order, relating to when an accused is called upon to give evidence at trial, provide:

“(1) At the trial of any person (other than a child) for an offence paragraphs (2) to (7) apply unless -

(a) the accused's guilt is not in issue, or

(b) it appears to the court that the physical or mental condition of the accused makes it undesirable for him to be called upon to give evidence;

but paragraph (2) does not apply if, before any evidence is called for the defence, the accused or counsel or a solicitor representing him informs the court that the accused will give evidence.

(2) Before any evidence is called for the defence, the court -

(a) shall tell the accused that he will be called upon by the court to give evidence in his own defence; and

(b) shall tell him in ordinary language what the effect of this Article will be if -

(i) when so called upon, he refuses to be sworn;

(ii) having been sworn, without good cause he refuses to answer any question;

and thereupon the court shall call upon the accused to give evidence.

(3) If the accused -

(a) after being called upon by the court to give evidence in pursuance of this Article, or after he or counsel or a solicitor representing him has informed the court that he will give evidence, refuses to be sworn; or

(b) having been sworn, without good cause refuses to answer any question, paragraph (4) applies.

(4) The court or jury, in determining whether the accused is guilty of the offence charged, may -

(a) draw such inferences from the refusal as appear proper;

(b) on the basis of such inferences, treat the refusal as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the refusal is material.”

B. Provisions governing access to a solicitor

28. The relevant provisions at the time of the applicant's trial governing the right of access to legal advice were contained in section 15 of the Northern Ireland (Emergency Provisions) Act 1987, of which the relevant parts provided:

“(1) A person who is detained under the terrorism provisions and is being held in police custody shall be entitled, if he so requests, to consult a solicitor privately.

(2) A person shall be informed of the right conferred on him by subsection (1) as soon as practicable after he has become a person to whom the subsection applies.

(3) A request made by a person under subsection (1), and the time at which it is made, shall be recorded in writing unless it is made by him while at a court and being charged with an offence.

(4) If a person makes such a request, he must be permitted to consult a solicitor as soon as practicable except to the extent that any delay is permitted by the section.

...

(8) An officer may only authorise a delay in complying with a request under subsection (1) where he has reasonable grounds for believing that the exercise of the right conferred by that subsection at the time when the detained person desires to exercise it -

...

(d) will lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or

(e) by alerting any person, will make it more difficult -

(i) to prevent any act of terrorism; or

(ii) to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism
...”

29. The delay had to be authorised by a police officer of at least the rank of superintendent (section 15(5)(a)) and the detained person had to be told

the reason for the delay (section 15(9)(a)). The courts in Northern Ireland have taken the view that the 1988 Order should not be read subject to section 15 of the 1987 Act, since the 1988 Order had come into force after the 1987 Act, and Parliament had not intended that an inference which was permitted by Article 3 of the 1988 Order could not be drawn because of the withholding of the right of access to legal advice given by section 15 of the 1987 Act.

C. Other relevant materials

30. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”), following a visit to places of detention in Northern Ireland in July 1993, made the following conclusions on Castlereagh Holding Centre in its published report.

“Castlereagh Holding Centre was located in a motley collection of prefabricated buildings, within the perimeter of Castlereagh Police Station. The Centre gave the general impression of being in need of some repair.

39. The Centre had 31 cells, four of which were located in a distinct section for women detainees. In addition, there were 21 interview rooms, two rooms for consultations with lawyers, a doctor's surgery, and a scenes of crime unit (the so-called Soco Suite).

40. The cells measured 6m² and were equipped with a metal frame bed (with mattress and blankets) and a chair. Artificial light was adequate and there was an effective dimmer system, controlled from outside the cell. However, the cells did not benefit from natural light. Further, the ventilation system appeared to function only moderately well and created a rather intrusive level of noise in certain cells. The cells were not fitted with a call system; however, uniformed officers were apparently always on duty in the cell block when persons were being detained. Toilet and shower facilities were located nearby and were in a satisfactory state of cleanliness at the time of the visit; no complaints were heard from detainees about access to those facilities.

41. The interview rooms were divided between one set of 13, located adjacent to the cells, and another set of eight in a separate building. The interview rooms adjacent to the cells measured 6m² and were equipped with a table, three chairs, and two wall-mounted cameras ... Like the cells, they did not benefit from natural light. The second set of eight interview rooms were equipped in a similar manner; however, they were considerably larger and did benefit from natural light.

42. On examining the main cell/interview room block from outside, it could be seen that the windows had been covered with plyboard, apart from one section of each, which had been fitted with a cowl, allowing some fresh air, but no natural light, to enter the cells and rooms. Questioned about the design of these window coverings, the officer in charge stated that they had been installed for 'security reasons'.

43. The CPT has already expressed the view that police cells should preferably enjoy natural light. This is even more desirable when, as at Castlereagh, persons may be held in custody for an extended period. Further, the absence of natural light in the

cells is all the more regrettable given that the majority of the interview rooms at Castlereagh also lacked natural light. Taking into account, in addition, the absence of exercise facilities (cf. paragraph 44), the net result was that a person detained at Castlereagh could effectively be deprived of natural light for several days or more (the only exception being time spent in consultation with his lawyer).

In the CPT's view such a situation is not acceptable. The Committee would add that it is confident that means could be found of providing access to natural light to detainees without compromising legitimate security needs.

44. The delegation was told by police officers that there were no facilities for exercise – either outdoor or indoor – for persons detained at Castlereagh. This is another serious shortcoming in an establishment in which persons can be held for up to seven days.

45. To sum up, the existing material conditions of detention at Castlereagh Holding Centre render it inappropriate as a place in which to detain persons for extended periods. The deficiencies as regards access to natural light for detainees and the absence of exercise facilities were the principal failings, but the mediocre ventilation system and the cramped and rather dilapidated nature of the facilities should also be mentioned. All these factors contributed to create a distinctly claustrophobic atmosphere.

The CPT recommends that the conditions of detention at Castlereagh Holding Centre be substantially improved without delay, taking into account the above remarks. If such an improvement were not to prove possible, the Holding Centre should be relocated elsewhere, in premises capable of offering better detention facilities.

...

109. ... Even in the absence of overt acts of ill-treatment, there is no doubt that a stay in a holding centre may be – and is perhaps designed to be – a most disagreeable experience. The material conditions of detention are poor (especially at Castlereagh) and important qualifications are, or at least can be, placed upon certain fundamental rights of persons detained by the police (in particular, the possibilities for contact with the outside world are severely limited throughout the whole period of detention and various restrictions can be placed on the right of access to a lawyer). To this must be added the intensive and potentially prolonged character of the interrogation process. The cumulative effect of these factors is to place persons detained at the holding centres under a considerable degree of psychological pressure. The CPT must state, in this connection, that to impose upon a detainee such a degree of pressure as to break his will would amount, in its opinion, to inhuman treatment.”

31. On 10 December 1999 an official announcement was made that the Holding Centre at Castlereagh was to close by the end of December 1999.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 § 3 (c)

32. The applicant alleged that he had been denied a fair trial, in breach of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 thereof, of which the relevant provisions state:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

...”

33. The applicant complained that under the Criminal Evidence (Northern Ireland) Order 1988 (“the 1988 Order”), adverse inferences may be drawn from an accused's failure to respond to police questioning during detention. However, an accused is not entitled to have a solicitor present during interview, notwithstanding the inherent compulsion in the Order to incriminate oneself. The applicant argued that the implications of the Order for the rights of the defence can only be properly understood and assessed with the help of legal advice, especially since a decision to remain silent is one which has to be revisited throughout the period of detention. In this regard, the applicant stated that the nature of the questions put to an accused may evolve in the light of new evidence, thus making it imperative to guarantee him access to legal advice on a continuous basis.

34. The applicant asserted that he had been compelled to incriminate himself before he had received any legal advice and that it was only after the police had obtained his signed confession statement that he was allowed to consult with his solicitor. The applicant argued that the Court's *John Murray v. the United Kingdom* judgment of 8 February 1996 (*Reports of Judgments and Decisions* 1996-I) was authority for the proposition that he should have had access to his solicitor at the initial stages of police interrogation to allow him to assess the weight of the evidence against him and to make an informed choice as to whether or not to respond to questioning. The applicant stressed that the disputed confession statement

constituted the sole evidence against him at his trial and the sole basis of his conviction, in contrast to the applicant John Murray against whom there existed a formidable body of evidence. Had he held his silence there would have been no case to answer.

35. The applicant emphasised that due regard had to be given to the oppressive and appalling environment in which he was held incommunicado and interrogated intensively for prolonged periods by rotating teams of skilled interrogators in defiance of his clear indication on the first day of his detention that he wished to exercise his right to silence. With reference to, *inter alia*, a report dated 19 November 1994 of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the reports of the Independent Commissioner for Holding Centres published between 1993 and 1996, and the conclusions and recommendations of the United Nations Committee against Torture contained in its report of 17 November 1995, the applicant maintained that the detention regime in Castlereagh police station is intended to be coercive in order to break the will of the detainee to remain silent and contravenes international human rights norms. In his submission, there is well-documented and independent evidence which confirms that a deliberate strategy is pursued to refuse detainees access to solicitors, in particular during interview, in order to build up psychological pressure on them to make incriminating statements.

36. The Government, with reference to the above-mentioned John Murray judgment, contended that the applicant, unlike Mr Murray, was not faced with the choice between exercising his right to silence and mentioning facts which might later be relied on in his defence at his trial. The Government highlighted the fact that the applicant made a series of admissions during interview and did not advance at his trial any facts which could have been, but were not, mentioned when interviewed. No adverse inference was drawn at his trial pursuant to the 1988 Order. Accordingly, it was not open to the applicant to claim that under the effect of the Article 3 caution, he was trapped in what the Court described in its John Murray judgment as a “fundamental dilemma” which could only be resolved on the basis of legal advice. The only choice to be made was whether or not to tell the truth. The Government averred that there is no requirement under Article 6 of the Convention to ensure the provision of legal assistance to make that choice.

37. In the Government's submission, the real issue was whether the applicant, although denied access to a solicitor between the morning of 16 December 1988 and the morning of 17 December 1988 when he began to confess, received a fair trial. The fact that he was held incommunicado in a holding centre used specifically for questioning suspected terrorists cannot advance the applicant's claim to a free-standing right to legal assistance under Article 6 of the Convention. Even if interviewed intensively, particularly in the period prior to making his confession statement, the

number of interviews to which he was subjected during this period cannot be considered to vitiate the fairness of his trial. Quite apart from the consideration that the applicant began to confess after a nine-and-a-half-hour overnight break before confessing at interview no. 6 and had been medically examined, the Government stressed that there had been a full, lengthy and adversarial hearing on the *voir dire* in order to determine whether the applicant's admissions and signed confession should be ruled inadmissible. The trial judge expressly found on the evidence that the applicant had lied, that he had been treated fairly and properly throughout the interview process at Castlereagh police station and that his confession was accurate, reliable and voluntary.

38. The Court notes at the outset that it is not required to pronounce on the compatibility in general of the drawing of adverse inferences under Article 3 of the 1988 Order with the requirements of a fair hearing contained in Article 6 of the Convention. As in the above-mentioned John Murray case, the Court will confine itself to the particular facts of the instant case. It notes in this respect that the trial judge was not called on to exercise his discretion under Article 3 of that Order since the applicant admitted to the police during detention that he had been involved in terrorist offences. It would further observe that, although the applicant chose not to testify following the hearing on the *voir dire*, no inferences were drawn on that account. Accordingly, the applicant's silence was not an issue before the domestic courts, despite a cursory warning emitted by the trial judge regarding the applicant's failure to testify.

39. The Court accepts that the administration of a caution to an accused pursuant to Article 3 of the 1988 Order may place the latter in a dilemma at the beginning of the interrogation. On the one hand, if he chooses to remain silent, adverse inferences may be drawn against him in accordance with the provisions of the Order. On the other hand, if the accused opts to break his silence during the course of the interrogation, he runs the risk of prejudicing his defence without necessarily removing the possibility of inferences being drawn against him. Under such conditions the concept of fairness requires that the accused have the benefit of the assistance of a lawyer already at the initial stages of the police interrogation (see the John Murray judgment, loc. cit., p. 55, § 66). Unlike Mr Murray, the applicant did opt to break his silence. No adverse inferences were drawn from his silence prior to that decision and the Court cannot speculate as to whether the applicant would have maintained his silence if he had been permitted to consult his solicitor at any stage prior to the sixth interview at which he began to confess.

40. The Court considers that the central issue raised by the applicant's case is his complaint that he had been prevailed upon in a coercive environment to incriminate himself without the benefit of legal advice. It will examine the complaint in that context.

41. The Court recalls that, even if the primary purpose of Article 6, as far as criminal matters are concerned, is to ensure a fair trial by a “tribunal” competent to determine “any criminal charge”, it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 – may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see the *Imbrioscia v. Switzerland* judgment of 24 November 1993, Series A no. 275, p. 13, § 36). The manner in which Article 6 §§ 1 and 3 (c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case. In its *John Murray* judgment the Court also observed that, although Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation, this right, which is not explicitly set out in the Convention, may be subject to restriction for good cause. The question, in each case, is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing (see the *John Murray* judgment cited above, pp. 54-55, § 63).

42. The Court notes that the applicant made a specific request to see a solicitor on arrival at Castlereagh police station. However, the decision was taken to delay his access to a solicitor and he was questioned from 10.55 a.m. on 16 December 1988 to 12.45 p.m. on 18 December 1988 – more than forty-eight hours – without access to legal advice. He began to confess to his involvement in the conspiracy to bomb army personnel at 9.30 a.m. on 17 December 1988. He signed a confession statement at his seventh interview which began at 1 p.m. on 17 December 1988. The applicant was eventually able to consult his solicitor at 1 p.m. on 18 December 1988.

43. The Court observes that prior to his confession the applicant had been interviewed on five occasions for extended periods punctuated by breaks. He was examined by a doctor on two occasions including immediately before the critical interview at which he began to confess. Apart from his contacts with the doctor, the applicant was kept incommunicado during the breaks between bouts of questioning conducted by experienced police officers operating in relays. It sees no reason to doubt the truth of the applicant's submission that he was kept in virtual solitary confinement throughout this period. The Court has examined the findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) in respect of the Castlereagh Holding Centre (see paragraph 30 above). It notes that the criticism which the CPT levelled against the Centre has been reflected in other public documents (see paragraph 35 above). The austerity of the conditions of his detention and his exclusion from outside contact were intended to be psychologically coercive and conducive to breaking

down any resolve he may have manifested at the beginning of his detention to remain silent. Having regard to these considerations, the Court is of the opinion that the applicant, as a matter of procedural fairness, should have been given access to a solicitor at the initial stages of the interrogation as a counterweight to the intimidating atmosphere specifically devised to sap his will and make him confess to his interrogators. Irrespective of the fact that the domestic court drew no adverse inferences under Article 3 of the 1988 Order, it cannot be denied that the Article 3 caution administered to the applicant was an element which heightened his vulnerability to the relentless rounds of interrogation on the first days of his detention.

44. In the Court's opinion, to deny access to a lawyer for such a long period and in a situation where the rights of the defence were irretrievably prejudiced is – whatever the justification for such denial – incompatible with the rights of the accused under Article 6 (see, *mutatis mutandis*, the John Murray judgment cited above, p. 55, § 66).

45. It is true that the domestic court found on the facts that the applicant had not been ill-treated and that the confession which was obtained from the applicant had been voluntary. The Court does not dispute that finding. At the same time, it has to be noted that the applicant was deprived of legal assistance for over forty-eight hours and the incriminating statements which he made at the end of the first twenty-four hours of his detention became the central platform of the prosecution's case against him and the basis for his conviction.

46. Having regard to the above considerations, the Court concludes that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) thereof as regards the denial of access to a solicitor.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6

47. The applicant complained that he was discriminated against on grounds of national origin and/or association with a national minority. The relevant parts of Article 14 of the Convention provide:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national ... origin, association with a national minority, ... or other status.”

48. The applicant submitted that suspects arrested and detained in England and Wales under prevention of terrorism legislation can have access to a lawyer immediately and are entitled to his presence during interview. In addition, in England and Wales, at the relevant time, incriminating inferences could not be drawn from an arrested person's

silence during the interview in contradistinction to the position under the 1988 Order in Northern Ireland.

49. The Government pointed out that, contrary to the applicant's contention, the prevention of terrorism legislation in both jurisdictions at the material time allowed access to a solicitor to be delayed for up to forty-eight hours on limited grounds. Furthermore, a solicitor was not permitted to be present at the interview in England and Wales during the period in relation to which access was delayed. Since the applicant's complaint related to that particular period, it had to be concluded that the position and practice were the same in England and Wales as in Northern Ireland at the relevant time. In any event, the differences relied on by the applicant were based on geographical location and not on any personal characteristic or status.

50. The Court recalls that Article 14 of the Convention protects against a discriminatory difference in treatment of persons in analogous positions in the exercise of the rights and freedoms recognised by the Convention and its Protocols. It observes in this connection that in the constituent parts of the United Kingdom there is not always a uniform approach to legislation in particular areas. Whether or not an individual can assert a right derived from legislation may accordingly depend on the geographical reach of the legislation at issue and the individual's location at the time. For the Court, in so far as there exists a difference in treatment of detained suspects under the 1988 Order and the legislation of England and Wales on the matters referred to by the applicant, that difference is not to be explained in terms of personal characteristics, such as national origin or association with a national minority, but on the geographical location where the individual is arrested and detained. This permits legislation to take account of regional differences and characteristics of an objective and reasonable nature. In the present case, such a difference does not amount to discriminatory treatment within the meaning of Article 14 of the Convention.

51. For the above reasons the Court concludes that there has been no violation of Article 14 of the Convention taken in conjunction with Article 6.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

53. The applicant claimed compensation for his substantial loss of liberty and imprisonment, including loss of income during his detention, and for the suffering and distress inherent in his wrongful conviction in breach of Article 6 of the Convention.

54. The Government submitted that, if the Court were to find a violation of the Convention, that conclusion would in itself constitute sufficient just satisfaction.

55. The Court cannot speculate on whether the outcome of the applicant's trial would have been different had he obtained access to a solicitor at the beginning of his interrogation. It agrees with the Government that a finding of a violation of the Convention, in itself, constitutes sufficient just satisfaction for the purposes of Article 41.

B. Costs and expenses

56. The applicant claimed 52,426 pounds sterling (GBP) exclusive of value-added tax (VAT) by way of costs and expenses. This sum was made up of the fees charged by the two counsel who worked on the case (GBP 25,000) and by the applicant's solicitors (GBP 27,426).

57. The Government stated that the sum claimed was grossly excessive and at variance with the straightforward nature of the application. In their submission, the number of hours charged by the applicant's solicitors was unreasonable and their claim for "care and conduct" of the case inflated. They further point to the fact that the applicant's counsel did not provide any details of the time spent on the case nor of their hourly rate. The Government proposed that an overall sum of GBP 5,000 would represent a reasonable award in the circumstances, also bearing in mind that the Court declared the majority of the applicant's complaints inadmissible.

58. The Court, deciding on an equitable basis and having regard to the fact that its finding of a violation on the applicant's complaints is confined to his complaint concerning denial of access to a solicitor, awards the applicant the sum of GBP 10,000, plus any VAT that may be chargeable, and minus the amount of legal aid received from the Council of Europe.

C. Default interest

59. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c);
2. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 6;
3. *Holds* that the finding of a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) constitutes in itself sufficient just satisfaction for any damage sustained by the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, for costs and expenses, GBP 10,000 (ten thousand pounds sterling), plus any value-added tax that may be chargeable and minus the sum of FRF 4,100 (four thousand one hundred French francs) received from the Council of Europe by way of legal aid;
 - (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 June 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President