

Applications Nos. 12244/86, 12245/86, 12383/86

Bernard FOX, Maire CAMPBELL, Samuel HARTLEY

against

the UNITED KINGDOM

REPORT OF THE COMMISSION

(adopted on 4 May 1989)

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I. INTRODUCTION

1. The following is an outline of the case submitted to the European Commission of Human Rights and of the procedure before the Commission.

A. The applications

- The first applicant, Mr. Bernard Fox, is an Irish citizen born in 1951. He resides in Belfast, Northern Ireland.
- The second applicant, Ms. Maire Campbell, is an Irish citizen born in 1959. She resides in Belfast, Northern Ireland. She is the wife of the first applicant but is separated from him.
- The third applicant, Mr. Samuel Hartley, is an Irish citizen born in 1962. He resides in Waterfoot, Co. Antrim, Northern Ireland.
- The applicants are represented before the Commission by Messrs Madden & Finucane, solicitors, Belfast.
- The applications are directed against the United Kingdom. The respondent Government are represented by their Agent, Mr. M. C. Wood, Foreign and Commonwealth Office.
- The case concerns the arrest and detention of the applicants under Section 11 (1) of the Northern Ireland (Emergency Provisions) Act 1978 as suspected terrorists. The applicants invoke Articles 5 and 13 of the Convention.

B. The proceedings

8. The first and second applications (Fox and Campbell) were introduced on 16 June 1986 and registered on 19 June 1986.

9. The third application (Hartley) was introduced on 2 September 1986 and registered on 8 September 1986.

10. On 11 December 1986 the Commission decided in accordance with Rule 42 para. 2 (b) of its Rules of Procedure to give notice of the applications to the respondent Government and to invite them to submit before 3 April 1987 their observations in writing on the admissibility and merits of the applicants' complaints under Articles 5 and 13 of the Convention.

11. The Commission further decided on the same date to join the applications pursuant to Rule 29 of its Rules of Procedure.

12. The observations of the respondent Government were submitted on 14 May 1987 after an extension of the time limit had been obtained. The applicants' observations in reply were submitted on 10 September 1987 after a similar extension of the time limit had been granted.

13. The Commission next considered the applications on 9 December 1987 and decided to invite the parties to a joint hearing on the admissibility and merits of the case insofar as it raised issues under Articles 5 and 13 of the Convention.

14. At the hearing, which was held on 10 May 1988, the applicants were represented by Mr. R. Weir, Q.C., Mr. S. Treacy, of counsel, and Mr. P. Finucane, solicitor. The Government were represented by Mr. M. C. Wood, Mr. A. Campbell, Q.C., and Mr. N. Bratza, Q.C., of counsel, as well as two Government advisers.

15. Following the hearing, the Commission declared the case admissible and invited the parties to submit any further evidence or additional observations that they wished to put before the Commission. The Government were also requested to provide further background information relevant to the nature and strength of the suspicion underlying the applicants' arrest and detention. The Government's answers to this request were received on 15 June 1988 and subsequently communicated, for information, to the applicants' legal representatives.

16. In a letter dated 30 September 1988 the Government indicated that they did not wish to submit any further evidence or additional observations. No further evidence or additional observations were received from the applicants.

17. After declaring the case admissible, the Commission, acting in accordance with Article 28 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. In the light of the parties' reactions, the Commission now finds that there is no basis on which a friendly settlement can be effected.

C. The present Report

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

MM. J. A. FROWEIN, Acting President
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON

A. S. GÖZÜBÜYÜK
H. G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C. L. ROZAKIS
Mrs.J. LIDDY

19. The text of this Report was adopted by the Commission on 4 May 1989 and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

20. The purpose of the Report, pursuant to Article 31 of the Convention, is

(i) to establish the facts, and

(ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

21. A schedule setting out the history of the proceedings before the Commission is attached as Appendix I and the Commission's Decision on the admissibility of the application forms Appendix II.

22. The full text of the parties' submissions, together with documents lodged as exhibits, are held in the archives of the the Commission.

II. ESTABLISHMENT OF THE FACTS

A. Particular circumstances of the case

23. On 5 February 1986 the first and second applicants (Mr. Bernard Fox and Ms. Maire Campbell) were stopped by the police in Belfast and brought to Woodbourne Royal Ulster Constabulary station where a full search of the vehicle in which they were travelling was carried out. Twenty-five minutes after their arrival at the police station, at 15.40 hours, they were formally arrested under Section 11 (1) of the Northern Ireland (Emergency Provisions) Act 1978. They were informed that they were being arrested under this Section and that the arresting officer suspected them of being terrorists. They were also informed that they could be detained for up to 72 hours. The applicants were taken to Castlereagh Police Office. The first applicant was interviewed by the police on the same day between 20.15 hours and 22.00 hours. The second applicant was interviewed separately between 20.15 hours and 22.00 hours.

24. During their detention under Section 11 the applicants were asked about their suspected involvement that day in intelligence gathering and courier work for the Provisional Irish Republican Army. They were also questioned about their suspected membership of this organisation. No charges were brought against either applicant. The first applicant was released at 11.40 hours on 7 February 1986 and the second applicant, five minutes later, at 11.45 hours that day. Excluding the time taken to bring them to the police station, the first applicant had thus been detained 44 hours and the second applicant 44 hours and 5 minutes.

25. The applicants state that they were not informed of the reasons for their arrest nor told that there was any charge against them except that they were arrested as suspected terrorists. They were not brought before a judge or given any opportunity to apply for release on bail.

26. The third applicant (Mr. Samuel Hartley) was arrested at his home, in his parents' presence, at 07.55 hours on 18 August 1986 under Section 11 of the 1978 Act. He was informed at the time of his arrest that he was being arrested under Section 11 (1) as he was suspected to be a terrorist. He was taken to Antrim police station where he was interviewed by the police between 11.05 hours and 12.15 hours.

27. He was suspected of involvement in a kidnapping incident which had taken place earlier that month in Ballymena when a young man and woman were forcibly taken away by masked armed men. Those involved in the kidnapping were thought to have connections with the Provisional IRA. The motive behind the kidnapping was believed to have been an attempt to force the young woman to retract an allegation of rape made the previous year as a result of which a person had been convicted and sentenced to three years' imprisonment. During the applicant's detention he was asked about his suspected involvement in the kidnapping incident and his suspected membership of the Provisional IRA. He denied any such involvement. No charges were brought against him. He was released on 19 August 1986 at 14.10 hours after 30 hours and 15 minutes in detention.

28. On 6 February 1986 the first two applicants initiated proceedings for habeas corpus. The applicants were released, however, before the applications could be heard by a judge.

B. Factual basis of suspicion

29. No further information concerning the nature and strength of the suspicions underlying the arrest and detention of the applicants has been provided by the Government. They state that in cases of suspected terrorism the information on which arrests are based is frequently of acute sensitivity. To reveal it outside an immediate circle would have the effect of revealing the extent of the authorities' knowledge and, secondly, where the suspicions are based upon information provided by an informer, could lead to the informer being compromised and to his or her death at the hands of terrorists. The Government add, however, that the information underlying the suspicion against the applicants Fox and Campbell was already known to the police when they stopped their car on 5 February 1986.

30. The Government state that the first applicant, Mr. Fox, had been convicted on 21 February 1979 of possession of explosive substances and of causing an explosion and of two other offences of causing an explosion. For each of these four offences he was sentenced to 12 years' imprisonment, the sentences running concurrently. On the same occasion he was sentenced to five years' imprisonment, also concurrent, for belonging to the IRA. He was further convicted on 27 April 1979 of a further offence of possession of explosives and received a further 12-year concurrent sentence. The second applicant, Ms. Campbell, received an 18 months' suspended sentence in 1979 after being convicted of involvement in explosives offences.

C. Relevant domestic law and practice

1. Introduction

31. In the United Kingdom special legislation has been introduced for the purpose of combating terrorism in Northern Ireland or connected with the affairs of Northern Ireland. The Northern Ireland (Emergency Provisions) Act 1978 and its predecessors, the Northern Ireland (Emergency Provisions) Act 1973 and the Northern Ireland (Emergency Provisions) (Amendment) Act 1975 were enacted to enable the security forces to deal more effectively with the threat of terrorism.

2. Section 11 of the Northern Ireland (Emergency Provisions) Act 1978

32. Section 11 of the 1978 Act confers a power to arrest and detain suspected terrorists for a maximum of 72 hours and a power for them to be photographed and for finger and palm prints to be taken.

33. The relevant parts of Section 11 provide as follows:

Section 11 (1) states:

"Any constable may arrest without warrant any person whom he suspects of being a terrorist."

Section 11 (3) states:

"A person arrested under this section shall not be detained in right of the arrest for more than seventy-two hours after his arrest, and section 132 of the Magistrates' Courts Act (Northern Ireland) 1964 and section 50(3) of the Children and Young Persons Act (Northern Ireland) 1968 (requirement to bring arrested person before a magistrates' court not later than forty-eight hours after his arrest) shall not apply to any such person."

Sub-section (2) gives a power to enter and search premises where a suspected terrorist is or is suspected of being. Under Sub-section 4 persons arrested under Section 11 can be photographed and their finger prints and palm prints taken by a constable.

34. The power of arrest and detention under Section 11 (1) of the 1978 Act was originally an integral part of the detention scheme which replaced internment (Section 10 (5) of and Schedule 1 to the 1973 Act as amended by the 1975 Act). Since the powers in Section 10 (5) and Schedule 1 ceased to be used in 1975 and following the lapse of the successor provision in the 1978 Act in 1980, the Section 11 power has been used as a free standing power of arrest and detention.

35. Since their enactment in 1973, these powers of arrest and detention have had to be renewed periodically by an order made by the Secretary of State with the approval of both Houses of Parliament. Under the 1978 Act the provisions became renewable on a six-monthly basis (Section 33). The powers in Section 11 have been renewed every six months.

36. Section 31 (1) of the 1978 Act defines "terrorist" and "terrorism". A terrorist is "a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism". Terrorism is defined as "the use of violence for the purpose of putting the public or any section of the public in fear".

37. In 1983 the Secretary of State for Northern Ireland invited Sir George Baker, a retired senior member of the judiciary, to examine the operation of the 1978 Act to determine whether its provisions struck the right balance between maintaining, as fully as possible, the liberties of the individual whilst conferring on the security forces and courts adequate powers to protect the public from terrorist crime. There followed a number of recommendations in a report which was published in April 1984.

38. Section 11 (1) of the 1978 Act has now been replaced by Section 6 of the Northern Ireland (Emergency Provisions) Act 1987 which came into effect on 15 June 1987. This new power is confined to conferring a power of entry and search of premises for the purpose of arresting persons under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984.

39. The exercise of the arrest power in Section 11 (1) has been considered by the House of Lords in the case of *McKee v. Chief*

Constable [1984] 1 W.L.R. 1358. In that case the House of Lords decided that the proper exercise of the power of arrest in Section 11 depended entirely upon the state of mind of the arresting officer. It was necessary that the arresting officer suspected the person he was arresting to be a terrorist; otherwise the arrest was unlawful. He could form that suspicion on the basis of information given to him by his superior officer, but he could not arrest under Section 11 on the instructions of a superior officer who held the necessary suspicion unless the arresting officer himself held that suspicion. Lord Roskill, with whom the other Law Lords agreed, stated that the suspicion need not be a reasonable suspicion but it had to be honestly held. The requirement of a suspicion in the mind of a constable was a subjective test. That being so, the courts could only enquire as to the bona fides of the existence of the suspicion. The questions which were required to be answered appear from Lord Roskill's additional statement: "Did the constable in his own mind suspect and in my view the only other question of the courts is, was this an honest opinion?"

40. In addition to the arresting officer having an honestly held suspicion that the person concerned was a terrorist, the person who is arrested must be informed of the true grounds for the arrest in accordance with the requirements of a valid arrest set down by the House of Lords in the decision in *Christie v. Leachinsky* [1947] A.C. 573. The person arrested must be informed of the true grounds for his arrest at the time he is taken into custody or, if special circumstances exist to excuse this, as soon thereafter as it is reasonably practicable to inform him. Technical or precise language need not be used provided the detainee knows in substance why. A person is validly arrested under Section 11 (1) of the 1978 Act if he is informed that he is being arrested under this provision as a suspected terrorist (in *re McElduff* [1972] N.I. 1 and *McKee v. Chief Constable*, loc. cit.)

3. Remedies

41. The main remedies available to persons detained under the 1978 Act are an action for a writ of habeas corpus and a civil action claiming damages for false imprisonment (see, *mutatis mutandis*, Eur. Court H.R., *Brogan* judgment of 29 November 1988 to be published as Series A no. 145-B, paras. 39-41). In either case the court will examine the lawfulness of the arrest and detention. Review, in the case of arrest under Section 11 (1), will encompass procedural questions such as whether the arrested person has been properly informed of the true grounds for his arrest (*Christie v. Leachinsky*, loc. cit.). It will also encompass whether the conditions for arrest under Section 11 (1) have been complied with. As noted above, a court will not enquire into the reasonableness of the suspicion grounding the arrest but rather whether the suspicion of the arresting officer is an honest one (see *McKee v. Chief Constable*, loc. cit.)

III. OPINION OF THE COMMISSION

A. Points at issue

42. The following are the principal points at issue in the case:

Article 5 (Art. 5) of the Convention

- Whether the applicants' arrest and detention were justified under Article 5 para. 1 (Art. 5-1),
- Whether the applicants were informed promptly of the reasons for their arrest and of any charge against them as required by Article 5 para. 2 (Art. 5-2),
- Whether the applicants were able to challenge the lawfulness of their detention before a court as required by Article 5

para. 4 (Art. 5-4),

- Whether the applicants had an enforceable right to compensation as required by Article 5 para. 5 (Art. 5-5).

Article 13 (Art. 13) of the Convention

- Whether the applicants had an effective remedy with regard to their Convention complaints as required by Article 13 (Art. 13).

B. General considerations

43. The Commission recalls that the Convention organs are not called upon to examine in abstracto the compatibility of legislation or of a particular legislative provision with the Convention (see, for example, Eur. Court H.R., *Ashingdane* judgment of 28 May 1985, Series A no. 93, p. 25, para. 59). The Commission's task is rather to examine the circumstances and manner in which the law was applied in the particular circumstances of the case.

44. The applicants were arrested under emergency legislation which was adopted to deal with terrorist activities in Northern Ireland. Both the Commission and the Court have taken note of the growth of terrorism in modern society and have stressed the need for a proper balance to be struck between the defence of the institutions of democracy in the common interest and the protection of individual rights (see Eur. Court H.R., *Klass and Others* judgment of 6 September 1978, Series A no. 28, pp.23 and 27-28, paras. 48-49 and 59; also *Brogan and Others* judgment of 29 November 1988, to be published in Series A no. 145-B, para. 48).

45. Finally, in this context, the Commission recalls that the respondent Government withdrew on 22 August 1984 a notice of derogation under Article 15 (Art. 15) of the Convention which had been lodged because of the existence of an emergency situation in Northern Ireland (see *Brogan* judgment, loc. cit., para. 48). The respondent Government have not claimed that the arrest and detention of the applicants under Section 11 of the Northern Ireland (Emergency Provisions) Act 1978 is covered by Article 15 (Art. 15) of the Convention. The examination of the case must, therefore, proceed on the basis that the Articles of the Convention which have been invoked in the present case are fully applicable. However, this does not preclude the Commission from examining the applicants' complaints against the background of the terrorist campaign in Northern Ireland and the particular problems confronting the security forces in bringing those responsible for terrorist acts to justice and making its own assessment of whether the balance struck is a correct one under the Convention (see *Brogan and Others* judgment, loc. cit., para. 48; also Comm. Report 14.5.87, p. 16, paras. 80-86).

C. Article 5 para. 1 (Art. 5-1) of the Convention

46. The applicants allege a breach of Article 5 para. 1 (Art. 5-1) of the Convention which, in so far as relevant, provides:

"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:

...

(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;"

47. It is not in dispute between the parties that the applicants' arrest and detention were "in accordance with a procedure prescribed by law" and "lawful" under Northern Ireland law.

48. The applicants submit that the purpose of the arrest was not to bring them before the competent authority as required by this provision. They maintain that Section 11 (1) of the 1978 Act confers a general power of arrest for questioning which need not be associated with the institution of criminal proceedings.

49. The Government, on the other hand, contend that the applicants were arrested with a view to being brought before a court if the police investigation confirmed the suspicions against them and if sufficient admissible and usable evidence was available to prefer charges against them.

50. The Commission notes that Article 5 para. 1 (c) (Art. 5-1-c) requires that the purpose of the arrest and detention should be to bring the person concerned before the competent legal authority. However, the fact that the applicants were neither charged nor brought before a court does not necessarily mean that the purpose of their arrest and detention was not in accordance with Article 5 para. 1 (c) (Art. 5-1-c). This provision does not presuppose that the police should have obtained sufficient evidence to bring charges either at the point of arrest or while the applicants were in custody. Such evidence may have been unobtainable or, in view of the nature of the suspected offences, impossible to produce in court without endangering the lives of others. As in the Brogan case there is no reason to believe that in the present case the police investigation was not in good faith or that the detention of the applicants was not intended to further that investigation by way of confirming or dispelling the suspicions which grounded their arrests (see Brogan and Others judgment, loc. cit., para. 53).

51. The Commission is therefore satisfied that if the suspicion against the applicants had been confirmed, charges would have been preferred against them and they would have been brought before the competent legal authority. Their arrest and detention must therefore be taken to have been effected for the purpose set out in Article 5 para. 1 (c) (Art. 5-1-c).

52. The applicants further complain that they were not arrested and detained on "reasonable suspicion" of having committed an offence as required by Article 5 para. 1 (c) (Art. 5-1-c). They point out that Section 11 (1) of the 1978 Act only requires mere "suspicion" of being a terrorist as opposed to "reasonable suspicion".

53. They claim that if there had actually existed a "reasonable suspicion" they would have been detained under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 which would have enabled the police to detain them for up to seven days.

54. The Government submit that notwithstanding the terms of Section 11 (1) of the 1978 Act, there genuinely existed a "reasonable suspicion" in the circumstances of the case. They recall, in particular, that the first and second applicants had previously been convicted of offences connected with terrorism. The Government are unable to provide more specific background information about the nature and strength of the suspicions underlying the arrests for security reasons (see para. 29 above).

55. The Commission notes that the applicants do not contest that they were arrested and detained in connection with an "offence". In any event the Commission and the Court have found that arrest on suspicion of "terrorism" corresponds with the notion of an "offence" under Article 5 para. 1 (c) (Art. 5-1-c) (see Brogan and Others judgment, loc. cit., para. 51 and Comm. Report loc. cit., para. 89).

56. However, Section 11 (1) of the 1978 Act only requires a "suspicion" that a person is a terrorist, as opposed to a "reasonable

suspicion" as required by Article 5 para. 1 (c) (Art. 5-1-c).

57. The Government have contended that the Commission should not be bound by the terms of Section 11 and should enquire whether the suspicion was "reasonable" in the circumstances of the case.

58. The Commission interprets the provision of Article 5 para. 1 (c) (Art. 5-1-c) as requiring that the arresting or detaining authority shall base its decision on elements which create a "reasonable suspicion" against the person concerned. Such a "reasonable suspicion" must, in the Commission's opinion, be based on concrete facts of such strength as to convince an objective observer that the person concerned may have committed the offence.

59. The Commission notes that whereas a "reasonable suspicion" is a requirement for arrest and detention under United Kingdom law (see e.g. Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 and Sections 24 (4)(b) and 25 of the Police and Criminal Evidence Act 1984), the weaker criterion of a mere "suspicion" has been deliberately chosen in Section 11 (1) of the 1978 Act. The purpose has clearly been to make it possible to arrest and detain under that Act even in cases where the suspicion could not be shown to have been a "reasonable" one. 60. The decision of the House of Lords, in the case of *McKee v. Chief Constable*, makes it clear that the "suspicion" in Section 11 (1) of the 1978 Act need not be a "reasonable" suspicion. In the view of the House of Lords, as expressed by Lord Roskill, it is sufficient that the suspicion is honestly held by the arresting constable. The only relevant question to be answered is whether the constable in his own mind suspected the person concerned and whether this was an honest opinion. The Commission cannot find that this subjective test is sufficient to satisfy the requirements of Article 5 para. 1 (c) (Art. 5-1-c) of the Convention.

61. Where the applicable domestic law does not require a reasonable suspicion as the basis for an arrest, it is nevertheless conceivable that in some cases an arrest is in fact based on a reasonable suspicion. However, in the present case the Government have not provided any information which would allow the Commission to conclude that the suspicions against the applicants at the time of their arrest were "reasonable" within the meaning of Article 5 para. 1 (c) (Art. 5-1-c) of the Convention or that their arrest was based on anything more than the "honestly held suspicion" which was required under Northern Ireland law.

Conclusion

62. The Commission concludes, by 7 votes to 5, that the applicants' arrest and detention were not justified under Article 5 para. 1 (c) (Art. 5-1-c) and that consequently there has been a breach of Article 5 para. 1 (Art. 5-1) of the Convention.

D. Article 5 para. 2 (Art. 5-2) of the Convention

63. Article 5 para. 2 (Art. 5-2) reads as follows:

"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."

64. The applicants submit that they were not informed promptly of the reasons for their arrest and detention. They complain that they ought to have been told of the exact nature of the offences for which they were arrested. In particular, they maintain that Article 5 para. 2 (Art. 5-2) is not complied with where an accused is left to infer from the police interrogation the reasons for his arrest.

65. The Government contend, on the other hand, that Article 5 para. 2 (Art. 5-2) was satisfied since the applicants were informed in general terms of the reasons for their arrest. Moreover, following their

arrest they were questioned about the specific activities of which they were suspected.

66. The Commission considers that Article 5 para. 2 (Art. 5-2) of the Convention contains the elementary safeguard that a detainee should know why he is being arrested and deprived of his liberty. It is also an important purpose of the provision to enable the detainee to judge the lawfulness of the measure and take steps to challenge it, if he so desires, under Article 5 para. 4 (Art. 5-4) of the Convention. In addition, it is only by informing a person of the reasons for his arrest that he is enabled to admit or deny the charge against him (see Comm. Report 18.3.81, McVeigh, O'Neill and Evans v. the United Kingdom, D.R. 25 p. 15 at 45, para. 208).

67. At the time of their arrest the applicants were informed that they were being arrested under Section 11 of the 1978 Act as suspected terrorists. They were not given any specific information at this stage as to the nature of the suspicions against them, namely that they were suspected of intelligence gathering and courier work for the Provisional IRA or, in the case of Hartley, of involvement in a kidnapping incident. It is true that some hours later they were questioned about their involvement in particular activities but they were not even then given any precise information about the suspicions against them. It was left to the applicants to deduce the specific reasons for their arrest from the questions asked.

68. In the Commission's view, given the elementary nature of the safeguard, Article 5 para. 2 (Art. 5-2) places a direct burden on the arresting authorities to provide a detainee with adequate information as to the reasons for his arrest at the time of the arrest or as soon as is practicable thereafter. In the present case the Commission considers that the applicants were not given such reasons at the relevant time.

Conclusion

69. The Commission concludes, by 7 votes to 5, that the applicants were not informed promptly of the reasons for their arrest and that there has been a violation of Article 5 para. 2 of the Convention.

E. Article 5 para. 4 of the Convention

70. The applicants submit that since the Convention has not been incorporated into United Kingdom law, a Northern Ireland court could not examine the substantive basis for their arrest and detention. They therefore contend that they were unable to challenge the lawfulness of their detention within the meaning of Article 5 para. 4 (Art. 5-4) of the Convention.

71. Article 5 para. 4 (Art. 5-4) provides as follows:

"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."

72. The Government maintain that the courts, in an action for habeas corpus, can examine not only the procedural legality of the detention but also whether the person was arrested as a suspected terrorist and whether the suspicion was a genuine one.

73. The Commission recalls that the right to judicial control of the lawfulness of detention constitutes an important safeguard against an arbitrary and unlawful deprivation of liberty by requiring a speedy determination of the lawfulness of detention. However, where a

detained person is released before such a speedy determination could take place this provision becomes devoid of purpose and thus inapplicable (see e.g. No. 7376/76, Dec. 7.10.76 D.R. 7 p. 124; No. 9174/80, Comm. Report 11.10.83, D.R. 40 p. 59, para. 106).

74. In the present case the applicants were released after approximately 44 hours in the case of Mr. Fox and Ms. Campbell, and approximately 30 hours in the case of Mr. Hartley. Moreover the first two applicants initiated proceedings for habeas corpus but were released before their applications could be heard by a judge. Against this background, where the applicants were released before an effective judicial control of their detention could take place, there can be no violation of Article 5 para. 4 (Art. 5-4).

Conclusion

75. The Commission concludes, by 9 votes to 3, that there has been no violation of Article 5 para. 4 (Art. 5-4) of the Convention.

F. Article 5 para. 5 (Art. 5-5) of the Convention

76. The applicants submit that they have no enforceable right to compensation under Northern Ireland law. The Government contend that no enforceable right to compensation arises under this provision since the applicants were lawfully arrested and detained under Northern Ireland law.

77. Article 5 para. 5 (Art. 5-5) provides as follows:

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

78. The Commission notes that an enforceable right to compensation only arises when the arrest and detention was in breach of another provision of Article 5 (Art. 5) (see Brogan and Others judgment, loc. cit., paras. 66 and 67; also Comm. Report, loc. cit., paras. 115-119).

79. The Commission recalls that it has found the applicants' arrest and detention to have been effected in violation of Article 5 paras. 1 and 2 (Art. 5-1, 5-2) of the Convention. Moreover it is not disputed by the Government that it would not be open to the applicants to seek compensation before the Northern Ireland courts on the grounds that their arrest and detention were in breach of these provisions. It follows that the applicants have no enforceable right to compensation as required by Article 5 para. 5 (Art. 5-5) of the Convention.

Conclusion

80. The Commission concludes, by 7 votes to 5, that there has been a violation of Article 5 para. 5 (Art. 5-5) of the Convention.

G. Article 13 (Art. 13) of the Convention

81. This provision states as follows:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

82. The applicants complain that they have no effective remedy

under Northern Ireland law in respect of their complaints under Article 5 paras. 1 and 2 (Art. 5-1, 5-2) of the Convention.

83. However, in view of the Commission's finding that there has been a breach of Article 5 para. 5 (Art. 5-5) on the grounds that the applicants have no enforceable right to compensation, the Commission does not consider it necessary to examine this complaint.

Conclusion

84. The Commission concludes, by a unanimous vote, that no separate issue arises under Article 13 (Art. 13) of the Convention.

H. Recapitulation

85. The Commission concludes

- by 7 votes to 5, that the applicants' arrest and detention were not justified under Article 5 para. 1 (c) (Art. 5-1-c) and that consequently there has been a breach of Article 5 para. 1 (Art. 5-1) of the Convention (para. 62);

- by 7 votes to 5, that the applicants were not informed promptly of the reasons for their arrest and that there has been a violation of Article 5 para. 2 (Art. 5-2) of the Convention (para. 69);

- by 9 votes to 3, that there has been no violation of Article 5 para. 4 (Art. 5-4) of the Convention (para. 75);

- by 7 votes to 5, that there has been a violation of Article 5 para. 5 (Art. 5-5) of the Convention (para. 80);

- by a unanimous vote, that no separate issue arises under Article 13 (Art. 13) of the Convention (para. 84).

Secretary to the Commission

Acting President of the Commission

(H. C. KRÜGER)

(J.A. FROWEIN)

Dissenting Opinion of Mr. Busuttil, Mr. Gözübüyük
Sir Basil Hall and Mr. Martinez

1. We do not share the opinion of the majority of the Commission that there have been violations of Article 5 of the Convention in these cases.

2. The majority of the Commission have concluded that the arrest of the applicants has not been justified under Article 5 para. 1 (c) by reason of the fact that Section 11 (1) of the Northern Ireland (Emergency Provisions) Act 1978, under the provisions of which they were arrested, required only a "suspicion" that they were terrorists (as defined by that Act) and not a "reasonable suspicion".

3. While Section 11 (1) of the 1978 Act enables an arrest to take place only on suspicion, as opposed to reasonable suspicion as is required by Article 5 para. 1 (c), it cannot be assumed that an arrest under that section has not been based on reasonable suspicion. The compatibility of Section 11 of the 1978 Act is not to be examined in

abstracto. The question is rather whether in fact the applicants were arrested for the purpose of bringing them before a competent legal authority on reasonable suspicion of having committed an offence.

4. The applicants do not contest that they were arrested on suspicion of having committed an offence. Furthermore the Commission and the Court have found that arrest on suspicion of "terrorism" corresponds with the notion of an offence for the purposes of Article 5 para. 1 (c) (see Brogan and others judgment of 29 November 1988, para. 51 and the Commission's Report in that case, para. 89).

5. The Government have stated that the first and second applicants were suspected of intelligence gathering and courier work for the Provisional IRA. Furthermore the first applicant had been convicted of explosives offences connected with terrorism in 1979 and sentenced to twelve years imprisonment. The second applicant had also been convicted of explosives offences for which she had received a suspended sentence. The Government further stated that they were in possession of information connecting the third applicant (who had no criminal record) with a kidnapping incident; but they were unable for security reasons to be more specific.

6. We recognised that against the background of organised terrorism in Northern Ireland there is a particular need to protect sources of information which may preclude the giving of full information as to the grounds on which a suspicion of terrorism is held. None the less there must be sufficient information to lead to the conclusion that the suspicion held was reasonable. The information provided is such that we see no reason to doubt that there was a "reasonable suspicion" of all three applicants within the meaning of Article 5 para. 1 (c) of the Convention.

7. We agree with the view of the majority of the Commission that if the suspicion against the applicants had been confirmed they would have been brought before the competent legal authority.

8. The applicants contend that Article 5 para. 2 of the Convention requires that they should have been told of the exact nature of the offences for which they were arrested. The applicants were informed when formally arrested that they were being arrested under Section 11 (1) of the 1978 Act and that they were suspected of being terrorists. During their detention they were asked about specific acts and activities. In our opinion they were informed promptly of the reasons for their arrest, and there is no violation of Article 5 para. 2 of the Convention.

9. We agree that there is no violation of Article 5 para. 4.

10. Since in our view there is no contravention of any provision of Article 5 there is no violation of Article 5 para. 5.

Dissenting Opinion of Mr. Danelius joined by Mr. Jörundsson
(in regard to Article 5 para. 4 of the Convention)

According to the wording of Article 5 para. 4 of the Convention, the right guaranteed by that paragraph shall be enjoyed by "everyone who is deprived of his liberty by arrest or detention". This wording makes no exception for short periods of detention, and it would in my view reduce the value of the paragraph considerably if it was considered that no court remedy was necessary in cases where the

detention does not exceed a certain number of days or hours.

In this respect it is important to note that the existence of a court remedy as required by Article 5 para. 4 does not only make it possible for an unlawfully detained person to obtain his release, but it can also be presumed to give the arresting authority a particular incentive to act lawfully. Moreover, when a person is arrested, it is often not possible to foresee how long the detention will last. In the present case, the applicant's detention could under the applicable law be maintained for 72 hours, which is not an insignificant period. It would not seem satisfactory if a person arrested in such circumstances could not derive any right from Article 5 para. 4 if it subsequently appears that he is in fact released earlier than could be foreseen at the time of the arrest.

I therefore consider that the applicants were entitled under Article 5 para. 4 to take proceedings in order to obtain a court review of the lawfulness of their detention. As regards the scope of that court review we refer to the Brogan case which concerned detention under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984. In that case the European Court of Human Rights found as follows:

"According to the Court's established case-law, the notion of 'lawfulness' under paragraph 4 has the same meaning as in paragraph 1 (see notably the Ashingdane judgment of 28 May 1985, Series A no. 93, p. 23, para. 52); and whether an 'arrest' or 'detention' can be regarded as 'lawful' has to be determined in the light not only of domestic law, but also of the text of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 para. 1 (see notably the above-mentioned Weeks judgment, Series A no. 114, p. 28, para. 57). By virtue of paragraph 4 of Article 5, arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the 'lawfulness', in the sense of the Convention, of their deprivation of liberty. This means that, in the instant case, the applicants should have had available to them a remedy allowing the competent court to examine not only compliance with the procedural requirements set out in section 12 of the 1984 Act but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention." (Brogan and others judgment, para. 65)

In the present case, it was open to the applicants to seek the remedy of habeas corpus to challenge their detention. In such proceedings a court could examine whether their detention was lawful under United Kingdom law which meant that its examination of the reasons for arrest was limited to whether the arresting police officer had an honest suspicion that the persons concerned were terrorists. However, the court could not, as required by Article 5 para. 4, examine whether the detention was "lawful" within the meaning of the Convention, i.e. whether there existed a reasonable suspicion that the applicants had committed an offence. It follows that the applicants were unable to challenge the "lawfulness" of their detention before a court within the meaning of Article 5 para. 4 of the Convention.

I therefore conclude that there has been a violation of Article 5 para. 4 of the Convention in the present case.

Partly Concurring and Partly Dissenting Opinion of Mrs. Liddy

I agree with the conclusion of the majority that the requirement of "reasonable suspicion" contained in Article 5 para. 1 (c) has not been met in this case.

The approach of both the Court and the Commission in the case of Brogan and Others was to examine first the issue of reasonable suspicion and only then - and in the light of the assessment of the first issue - whether the purpose of the arrest was to bring the individual concerned before the competent legal authority. When addressing the latter issue, both the Court and the Commission referred back to the extent to which it had already been established that the arrests were grounded on reasonable "concrete" suspicions (Judgment of 29 November 1988, paras. 51 and 53; also Comm. Report 14.5.1987, paras. 91 and 95). This demonstrates the inter-relationship between these two requirements of Article 5 para. 1 (c).

In the present case, unlike the case of Brogan and Others, the requirement of reasonable suspicion has not been met. However, the views expressed at paragraphs 50 and 51 of the Report do not take account of any inter-relationship between the reasonableness of suspicions that an offence has been committed and the purpose of an arrest.

Because of the need to interpret strictly the exhaustive list of restrictions in paragraph 1 of Article 5 (cf. Bouamar Judgment of 29.2.1988, para. 43 and Ciulla Judgment of 22.2.1989, para. 41) it suffices in the present case to conclude for the reasons given at paragraphs 58 to 61 of the Report that there has been a violation of Article 5 para. 1.

With regard to Article 5 para. 4, I share the opinion of Mr. Danelius.

APPENDIX I

HISTORY OF THE PROCEEDINGS

Date	Item
16 June 1986 (Fox & Campbell)	Introduction of the applications
2 September 1986 (Hartley)	
19 June 1986 (Fox & Campbell)	Registration of the applications
8 September 1986 (Hartley)	
Examination of Admissibility	
11 December 1986	Commission's decisions to invite the Government to submit observations on the admissibility and merits of the applications and to join the applications
14 May 1987	Government's observations

10 September 1987	Applicants' observations in reply
9 December 1987	Decision to invite the parties to a joint oral hearing
10 May 1988	Decision to declare the applications admissible.
Examination of the Merits	
10 May 1988	Commission's deliberations on the merits.
29 November 1988	Judgment of the European Court of Human Rights in the case of "Brogan & Others"
11 April 1989	Commission's deliberations on the merits and final votes
4 May 1989	Adoption of the Report.