

AS TO THE ADMISSIBILITY OF

Application No. 14765/89
by Patrick O'HAGAN
against the United Kingdom

The European Commission of Human Rights (Second Chamber)
sitting in private on 5 March 1991, the following members being
present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
Mrs. G.H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ RUIZ
MM. J.-C. GEUS
M.P. PELLONPÄÄ

Mr. K. ROGGE, Secretary to the Second Chamber

Having regard to Article 25 of the Convention for the
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 27 February
1989 by Patrick O'HAGAN against the United Kingdom and registered on
10 March 1989 under file No. 14765/89;

Having regard to the report provided for in Rule 47 of the
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, Patrick O'Hagan, is a citizen of the United
Kingdom, born in 1952 and resident in Omagh, County Tyrone, Northern
Ireland. He is represented before the Commission by Messrs. J.
Christopher Napier & Co., Solicitors, Belfast.

The facts of the present case, as submitted by the parties,
may be summarised as follows.

At 06.14 hrs. on 29 September 1988 the applicant, who is a
suspected member of the Provisional IRA and who has convictions for
possession of firearms and explosives, was arrested under section 12
of the Prevention of Terrorism (Temporary Provisions) Act 1984 at his
home. The police had received information that there was a suspected
munitions hide on his property. At the time of his arrest he was told
that he was being arrested under section 12 of the 1984 Act as he was
suspected of being involved in terrorism. He was taken to Armagh
Police Office. On his arrival there he was given a copy of the notice
to persons in police custody. His detention was extended by three
days until 06.14 hrs. on 4 October and he was released without charge
at 12.55 hrs. on 3 October.

A search of the applicant's house, outbuildings and land was
carried out from 29 September until 1 October 1988 pursuant to section
15 of the Northern Ireland (Emergency Provisions) Act 1978. Nothing
was found, with the exception of a quantity of republican literature.

The applicant saw a solicitor on 1 October 1988.

At the outset of his first interview, which began at 09.45 hrs. on 29 September, he was told that the police were enquiring into terrorist activity and involvement in the Mountfield and Carrickmore areas of County Tyrone, where he lives. He was questioned about his association with certain known Provisional IRA terrorists from these areas, the murder of John Kyle in Greencastle in July 1986 and the applicant's membership of the Provisional IRA. The applicant said that since his release from a 12 year prison sentence he had married and settled down and had no ties with Provisional IRA members, no involvement with the organisation or membership of it and no knowledge of the murder of John Kyle. At subsequent interviews he was further questioned about these matters and about the suspected storage of bombs, bomb-making equipment and weapons on his land and at his home. He denied involvement in the matters put to him and further denied that bombs or weapons were present on his land or at his home. He declined to sign the interview notes.

COMPLAINTS

The applicant complains that his detention was unlawful, contrary to Article 5 para. 1 of the Convention, in particular Article 5 para. 1 (c), because it was not effected for the purpose of bringing him before a competent legal authority, but in order to ascertain more about terrorist activity and involvement in the Mountfield and Carrickmore areas of County Tyrone where he lives, and the involvement of other people in terrorist activity.

He also alleges that he was detained in breach of Article 5 para. 3 of the Convention, in that he was not brought promptly before a judge in order to be charged, or released promptly without charge. He complains that he had no right to compensation for this alleged breach of Article 5 para. 3, pursuant to Article 5 para. 5 of the Convention.

The applicant originally complained of a violation of Article 5 para. 2 of the Convention. After the European Court of Human Rights had given its judgment in the Fox, Campbell and Hartley case, he conceded that in that case the Court had made a finding of no violation in circumstances very similar to his own in relation to Article 5 para. 2 (cf. Eur. Court H.R., Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, paras. 37-43).

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 27 February 1989 and registered on 10 March 1989. After a preliminary examination of the case by the Rapporteur, the Commission considered the admissibility of the application on 6 May 1989. The Commission decided to request the parties' written observations on the admissibility and merits of the application, pursuant to Rule 42 para. 2 (b) of its Rules of Procedure (former version). It was joined with 15 other applications of a similar kind.

The Government lodged their observations on 21 September 1989 after an extension of the time-limit fixed for their submission. The applicant's representatives submitted observations in reply on 18 October 1989.

On 6 February 1990 the Commission decided to adjourn its examination of the application pending the judgment of the Court in the case of Fox, Campbell and Hartley v. the United Kingdom, in view of an original complaint made by the applicant under Article 5 para. 2 of the Convention. The Court delivered its judgment in this case on 30 August 1990.

On 7 September 1990 the Commission decided to invite the parties to submit any comments they might have on the significance of this judgment for the admissibility of the application. The applicant's representatives submitted comments on 5 October 1990. The Government lodged their comments on 23 November 1990 after an extension of the time limit fixed for their submission.

In his various observations the applicant withdrew certain original complaints he had made under Article 5 para. 4 and Article 13 of the Convention. As regards Article 5 para. 2, the applicant conceded that the European Court's finding in the Fox, Campbell and Hartley case was made in circumstances very similar to his own (see above under COMPLAINTS).

On 26 February 1991 the Commission decided to refer the case to the Second Chamber.

THE LAW

1. The applicant first contends that his arrest and detention under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 were in breach of Article 5 para. 1 (Art. 5-1) of the Convention, in particular Article 5 para. 1 (c) (Art. 5-1-c). He concedes that there was a reasonable suspicion against him which entitled the Government to make the arrest, but from the facts, agreed by the Government, it is clear that the purpose of his ensuing detention was not to bring him before a competent legal authority, but to obtain further information about terrorist activity in his locality and others' involvement in such activity. He claims that this rendered his detention unlawful for the purposes of the Convention.

The Government rely on the judgment of the Court in the Brogan and Others case in support of their contention that the applicant was lawfully detained under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention.

The relevant part of Article 5 para. 1 (Art. 5-1) of the Convention reads as follows:

"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 ..."

The Commission notes that there is no dispute that the applicant's arrest and detention were "lawful" under Northern Ireland law and, in particular, "in accordance with a procedure prescribed by law". Nor does the applicant dispute that there was reason to suspect him of a criminal offence at the time of his arrest. He only contests the purpose of the arrest, which allegedly was not in order to bring him before a competent legal authority.

The Commission refers to the Court's judgment in the case of Brogan and Others in which it observed that the fact that applicants are not charged or brought before a court does not necessarily mean that the purpose of the detention was not in accordance with Article 5 para. 1 (c) (Art. 5-1-c) of the Convention:

"... the existence of such a purpose must be considered
independently of its achievement and sub-paragraph (c) of

Article 5 para. 1 (Art. 5-1-c) does not presuppose that the police should have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicants are 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."

(Eur. Court H.R., judgment of 29 November 1988, Series A No. 145-B pp. 29-30 para. 53)

The Commission finds that in the present case, as in the Brogan and Others case, there is no reason to believe that the police investigation regarding the applicant was not in good faith or that his detention was not intended to further that investigation by way of confirming or dispelling their concrete suspicions about his involvement in a criminal offence, which had grounded his arrest. Had it been possible, the police would presumably have laid charges and the applicant would have been brought before the competent legal authority. The Commission concludes, therefore, that his arrest and detention were for the purpose specified in Article 5 para. 1 (c) (Art. 5-1-c) of the Convention. It follows that this aspect of the case is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant next complains that his arrest and detention under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 from 29 September to 3 October 1988 failed to observe the requirement of promptness laid down in Article 5 para. 3 (Art. 5-3) of the Convention, for which failure he had no enforceable right to compensation, contrary to Article 5 para. 5 (Art. 5-5) of the Convention.

Article 5 paras. 3 and 5 (Art. 5-3, 5-5) of the Convention provides as follows:

"3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (Art. 5-1-c) 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."

"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."

The Government contend that the basis of the applicant's complaint under Article 5 para. 3 (Art. 5-3) of the Convention is unclear and manifestly ill-founded. As the facts of the case disclose no breach of the other provisions of Article 5 (Art. 5), no issue could arise under Article 5 para. 5 (Art. 5-5) of the Convention. The applicant, in reply, relies on the judgment of the Court in the case of Brogan and Others (Eur. Court H.R., judgment of 29 November 1988, Series A no. 145-B) in support of his claims under Article 5 paras. 3 and 5 (Art. 5-3, 5-5) of the Convention, and from which case he submits that his application is indistinguishable.

The Commission recalls that in the Brogan and Others case the Commission and the Court found a violation of Article 5 para. 3 (Art. 5-3) of the Convention in respect of the detention of four applicants under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, for periods varying from 4 days 6 hours to 6 days 16 1/2 hours, without being brought before a judicial authority. In the same case, the Commission and the Court also found a violation of Article 5 para. 5 (Art. 5-5) of the Convention in that the applicants had not had a right to compensation in respect of the

violation of Article 5 para. 3 (Art. 5-3) (Eur. Court H.R., judgment of 29 November 1988, Series A no. 145-B, paras. 55-62 and paras. 66-67).

The Commission notes that the applicant was arrested and detained for 4 days 6 hours and 41 minutes under the same provisions as in the Brogan and Others case, without being brought before a judge or other officer authorised by law to exercise judicial power. The Commission finds, therefore, that the applicant's complaints under Article 5 paras. 3 and 5 (Art. 5-3, 5-5) of the Convention cannot be declared manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring this aspect of the case inadmissible has been established.

3. After having first complained of a violation of Article 5 para. 2 (Art. 5-2) of the Convention, the applicant subsequently conceded that in the Fox, Campbell and Hartley case the European Court of Human Rights had made a finding of no violation of that provision in circumstances very similar to his own (cf. Eur. Court H.R., Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, paras. 37-43). The Commission interprets this statement as a withdrawal of his complaint in this regard and therefore makes no finding in respect of Article 5 para. 2 (Art. 5-2).

For these reasons, the Commission unanimously

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant's complaints under Article 5 paras. 3 and 5 (Art. 5-3, 5-5) of the Convention;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the
Second Chamber

President of the
Second Chamber

(K. ROGGE)

(S. TRECHSEL)