

AS TO THE ADMISSIBILITY OF

Application No. 18714/91
by David BRIND and Others
against the United Kingdom

The European Commission of Human Rights sitting in private on
9 May 1994 the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 12 March 1991 by
David BRIND and Others against the United Kingdom and registered on
22 August 1991 under file No. 18714/91;

Having regard to :

- reports provided for in Rule 47 of the Rules of Procedure of the
Commission;
- the observations submitted by the respondent Government on
12 July 1993 and the observations in reply submitted by the
applicants on 25 November 1993;

Having deliberated;

Decides as follows:

THE FACTS

The first six applicants are a television producer and five other
broadcast journalists, working as employed or independent television
and radio producers, editors or presenters. The seventh applicant is
a clerk, who is bringing the application as the holder of a television
licence. A list of the seven applicants is set out in the annex.

In the proceedings before the Commission the applicants are
represented by Messrs. Stephens Innocent, solicitors practising in
London. The facts of the case may be summarised as follows.

- (a) The particular circumstances of the case

On 19 October 1988, the Secretary of State for the Home Department issued two notices, one addressed to the British Broadcasting Corporation (BBC), the other to the Independent Broadcasting Authority (IBA), in the following terms:

"1. ... I hereby require [the BBC] [the IBA] to refrain at all times from sending any broadcast matter which consists of or includes -

any words spoken, whether in the course of an interview or discussion or otherwise, by a person who appears or is heard on the programme in which the matter is broadcast where -

(a) the person speaking the words represents or purports to represent an organisation specified in paragraph 2 below, or

(b) the words support or solicit or invite support for such an organisation,

other than any matter specified in paragraph 3 below.

2. The organisations referred to in paragraph 1 above are -

(a) any organisation which is for the time being a proscribed organisation for the purposes of the Prevention of Terrorism (Temporary Provisions) Act 1984 or the Northern Ireland (Emergency Provisions) Act 1978; and

(b) Sinn Féin, Republican Sinn Féin and the Ulster Defence Association.

3. The matter excluded from paragraph 1 above is any words spoken -

(a) in the course of proceedings in Parliament, or

(b) by or in support of a candidate at a parliamentary, European Parliamentary or local election pending that election."

The Home Secretary explained the reasons for the measure in a statement to Parliament on 19 October 1988:

"For some time broadcast coverage of events in Northern Ireland has included the occasional appearance of representatives of para-military organisations and their political wings, who have used these opportunities as an attempt to justify their criminal activities. Such appearances have caused widespread offence to viewers and listeners throughout the United Kingdom, particularly just after a terrorist outrage. The terrorists themselves draw support and sustenance from access to radio and television - from addressing their views more directly to the population at large than is possible through the press. The Government have decided that the time has come to deny this easy platform to those who use it to propagate terrorism. Accordingly, I have today issued to the chairmen of the BBC and the IBA a notice... The restrictions will not apply to the broadcast of proceedings in Parliament, and in order not to impair the obligation on the broadcasters to provide an impartial coverage of elections the notices will have a more limited effect during election periods... These restrictions follow very closely the lines of similar provisions which have been operating in the Republic of Ireland for some years... Broadcasters have a dangerous and unenviable task in reporting events in Northern Ireland. This step is no criticism of them. What concerns us is the use made of broadcasting facilities by supporters of terrorism. This is not a restriction on reporting. It is a restriction on direct appearances by those who use or support violence..."

By way of an explanatory letter dated 24 October 1988 the Home Office offered guidance to the BBC on the interpretation of the notices. The letter, which was copied to the IBA, provided, inter alia, as follows:

"It was asked whether the notice applied only to direct statements by representatives of the organisations or their supporters or whether it applied also to reports of the words they had spoken. We confirmed, as the Home Secretary has made clear in Parliament, that the correct interpretation (and that which was intended) is that it applies only to direct statements and not to reported speech, and that the person caught by the notice is the one whose words are reported and not the reporter or presenter who reports them. Thus the notice permits the showing of a film or still picture of the initiator speaking the words together with a voice-over account of them, whether in paraphrase or verbatim. We confirmed that programmes involving the reconstruction of actual events, where actors use the verbatim words which had been spoken in actuality, are similarly permitted.

...

The BBC also asked whether a member of an organisation or one of its elected representatives could be considered as permanently representing that organisation so that all his words, whatever their character, were covered by the Notice. We confirmed that the Home Office takes the view that this is too narrow an interpretation of the word "represents" in paragraph 1(a) of the text. A member of an organisation cannot be held to represent that organisation in all his daily activities. Whether at any particular instance he is representing the organisation concerned will depend upon the nature of the words spoken and the particular context. Where he is speaking in a personal capacity or purely in his capacity as a member of an organisation which does not fall under the notice (for example, an elected Council), it follows, from that interpretation, that paragraph 1(a) will not apply. Where it is clear, from the context and the words that he is speaking as a representative of an organisation falling under the notice, his words may not be broadcast directly, but (as mentioned above) can be reported. (He may, of course, come within the scope of paragraph 1(b), if his words contain support for the organisation.) Although there may be borderline occasions when this distinction will require a careful exercise of judgment, we believe that the great majority of broadcast material will fall clearly within one case or the other."

On 2 November 1988 the Home Secretary's directions to the BBC and the IBA were debated in the House of Commons, and approved by 243 votes to 179. The House of Lords, also after a debate, took note of the directions on 8 December 1988.

The applicants challenged the directions in judicial review proceedings. Their application was dismissed by the High Court on 26 May 1989, and their appeal was dismissed by the Court of Appeal on 6 December 1989 and by the House of Lords on 7 February 1991.

The House of Lords held that for lack of incorporation into domestic law the Convention rights were incapable of being directly enforced by the English courts. Applying the Convention either directly or by reference to the principles developed in the Convention organs' case-law would amount to a judicial usurpation of the legislative function. Judicial review was confined to examining whether the Home Secretary had acted unreasonably in issuing the directions. On this question, Lord Bridge stated inter alia:

"Most of the rights spelled out in terms in the Convention, including the right to freedom of expression, are less than

absolute and must in some cases yield to the claims of competing public interests. Thus, Article 10 para. 2 of the Convention spells out and categorises the competing public interests by reference to which the right to freedom of expression may have to be curtailed. In exercising the power of judicial review we have neither the advantages nor the disadvantages of any comparable code to which we may refer or by which we are bound. But again, this surely does not mean that in deciding whether the Secretary of State, in the exercise of his discretion, could reasonably impose the restriction he has imposed on the broadcasting organisations, we are not perfectly entitled to start from the premise that any restriction of the right to freedom of expression requires to be justified and that nothing less than an important competing public interest will be sufficient to justify it. The primary judgment ... falls to be made by the Secretary of State to whom Parliament has entrusted the discretion. But we are entitled to exercise a secondary judgment by asking whether a reasonable Secretary of State, on the material before him, could reasonably make that primary judgment.

Applying these principles to the circumstances of the case, ... I find it impossible to say that the Secretary of State exceeded the limits of his discretion. In any civilised and law-abiding society the defeat of the terrorist is a public interest of the first importance. ... The Secretary of State, for the reasons he made so clear in Parliament, decided that it was necessary to deny to the terrorist and his supporters the opportunity to speak directly to the public through the most influential of the media of communication and that this justified some interference with editorial freedom. I do not see how this judgment can be categorised as unreasonable. ..."

The applicants had invited the Court to apply a test of proportionality as developed by the European Court of Human Rights for the purpose of interpreting Article 10 para. 2 of the Convention. Rejecting this approach as being outside the scope of judicial review, Lord Ackner said:

"The European test of whether the "interference" complained of corresponds to a "pressing social need" ... must ultimately result in the question "Is the particular decision acceptable?" And this must involve a review of the merits of the decision. Unless and until Parliament incorporates the Convention into domestic law, ... there appears to me to be at present no basis upon which the proportionality doctrine applied by the European Court can be followed by the courts of this country."

(b) The relevant domestic law

The notices made in the present case were authorised under powers conferred on the Home Secretary in a "Licence and Agreement" of 2 April 1981 in respect of the BBC and under Section 29 of the Broadcasting Act 1981 in respect of the IBA.

The BBC is a public corporation governed by a Royal Charter which defines its objects, powers and obligations, its constitution and the sources and uses of its revenues. The Licence and Agreement prescribes the terms and conditions of the corporation's operations.

Clause 13 (4) of the Licence and Agreement reads as follows:

"The Secretary of State may from time to time by notice in writing require the Corporation to refrain at any specified time or at all times from sending any matter or matters of any class specified in such notice; and the Secretary of State may at any time or times vary or revoke any such notice..."

Section 29 (3) of the Broadcasting Act 1981 provides that:

"... the Secretary of State may at any time by notice in writing require the Authority to refrain from broadcasting any matter or classes of matter specified in the notice; and it shall be the duty of the Authority to comply with the notice."

COMPLAINTS

The applicants complain that as a result of the Home Secretary's directions there was unjustified interference with their right to receive and impart information and ideas. They invoke Article 10 of the Convention.

They submit that as a result of the directions they have suffered direct and continuing interference with their right under Article 10 of the Convention to impart and receive information and ideas. By way of illustration of the impact of the directions on their professional work as broadcasters and of the "chilling effect" on coverage of issues in Northern Ireland, they provide the following examples:

- an interview with Gerry Adams, President of Sinn Fein and later Member of Parliament for West Belfast, which was conducted in 1982, can no longer be retransmitted;
- another interview with Gerry Adams MP conducted by the "World in Action" programme cannot be retransmitted, so that the half-truths, evasions and hypocrisy of those who excuse terrorist atrocities cannot be exposed;
- an interview with Ms McGuinness, a Sinn Fein local councillor, produced in the week following the Directive, which relates inter alia to her campaign over the closure of the local hospital was banned by the IBA in consequence of the directives;
- an interview with a Sinn Fein spokesman about the SDLP/Sinn Fein talks, conducted and transmitted by the BBC in September 1988, cannot be retransmitted;
- "phone-in" radio programmes require examination of callers' political views prior to permitting them access to the airwaves;
- historical programmes such as "Ireland - A Television History" and "The Troubles" have been refused repeat showings because they contain historical documentary footage of notable Irish leaders who were in the past members or supporters of the IRA or Sinn Fein;
- a record made by the Irish folk singing group "The Pogues" was banned from air play on radio stations by the IBA on the grounds that its lyrics were supportive of the IRA (by suggesting that six men convicted of an IRA bombing in Birmingham in 1973, and four men convicted of an IRA bombing in Guildford in 1974, were not guilty as charged) until the ban was lifted in March 1991 when the convictions of the ten people were quashed on the grounds of miscarriage of justice.

They further complain that, by limiting judicial review to a test of unreasonableness, the courts denied them an effective remedy for their Convention claim, contrary to Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 March 1991 and registered on 22 August 1991.

On 31 August 1992 the Commission decided to communicate the application to the respondent Government for observations on its admissibility and merits.

The Government submitted their observations on 12 July 1993, after successive extensions of the time-limit in order to enable the Government to consider video recordings which were finally submitted by the applicants on 28 May 1993. The applicants submitted their observations, after two extensions of the time-limit, on 25 November 1993.

THE LAW

1. The applicants allege a violation of Article 10 (Art. 10) of the Convention by virtue of the effect of the notices made by the Home Secretary on 19 October 1988.

Article 10 (Art. 10) of the Convention provides, so far as relevant, as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Government submit that the seventh applicant, who is not a journalist but applies to the Commission as a member of the public who has paid his television licence fee and who alleges restrictions on his right "to receive... information", cannot claim to be a "victim" of a violation of the Convention within the meaning of Article 25 (Art. 25) of the Convention. The applicants point out that the seventh applicant is adversely affected by the notices as he is unable to receive the information on the basis of which he could otherwise assess and judge the personalities and policies of Sinn Féin.

The Commission is not required to determine this aspect of the case, as it finds that the application is in any event manifestly ill-founded in respect of all the applicants, for the reasons set out below.

The Government accept that, for the purposes of Article 10 (Art. 10) of the Convention, there has been an interference with the right of the first to sixth applicants to freedom of expression, but they point out that the extent of the interference is less than that resulting from the restrictions applicable in Ireland when the Commission decided Application No. 15404/89 (Dec. 16.4.91), and in any event is mitigated by the fact that the notices do not limit the words which can be spoken on radio and television, but merely require (for statements falling within the ambit of the notices) an actor's voice to be used.

The applicants do not accept the Government's claim that the extent of the interference is limited. They point out that the penalty for non-compliance with the notices - the loss of the right to broadcast - is so enormous that broadcasters will always err on the safe side, with the result that a substantial "chilling effect" is

brought about. They also refer to academic research which indicates that the notices have had a considerable effect on current affairs coverage in Northern Ireland.

The Commission recalls that freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders, and freedom of political debate is at the very core of the concept of a democratic society (Eur. Court H.R., Oberschlick judgment of 23 May 1991, Series A no. 204, p. 25, para. 58). Whatever view may be formed of the politics of, for example, Sinn Féin, it is the role of broadcasters and journalists, such as the first to sixth applicants, subject to the restrictions imported by the duties and responsibilities referred to in Article 10 para. 2 (Art. 10-2) of the Convention, to channel to the public information about political movements and their leaders. Article 10 (Art. 10) rights to convey information can be interfered with by restrictions on the manner of conveying information, as well as on the content of the information (Nos. 11553/85 and 11658/85, Dec. 9.3.87, D.R. 51, p. 136, 144; Eur. Court H.R., Autronic judgment of 22 May 1990, Series A no. 178, p. 23, para. 47).

The Commission notes that the notices have a real impact on the way in which the first to sixth applicants undertake their journalistic functions, and finds that each has been subjected to interference with his or her rights under Article 10 (Art. 10).

The interference entails a violation of Article 10 (Art. 10) of the Convention if it does not fall within one of the exceptions provided for in paragraph 2. The Commission must therefore examine whether the interference was "prescribed by law", whether it had an aim or aims that is or are legitimate under Article 10 para. 2 (Art. 10-2), and whether it was "necessary in a democratic society" to achieve that aim or those aims.

The Government submit that the Licence and Agreement of 1981 in the case of the BBC and the Broadcasting Act 1981 in the case of the IBA provide the necessary regulatory background to the notices, and that, when taken together with the explanatory letter from the Home Office, the directions fall within the concept of "law" as defined by the European Court of Human Rights in the Sunday Times case (Eur. Court H.R., Sunday Times judgment of 26 April 1979, Series A no. 30, p. 31, para. 49). The applicants consider that the directions contained in the notices are so unclear that it cannot realistically be determined what they cover. In particular they point to the gloss put on the directions by the Home Office explanatory letter of 24 October 1988, namely that an elected individual may speak as an elected individual but not, if a member of Sinn Féin, as a member of Sinn Féin. They consider that it is impossible to separate the statements of an individual which are made in his capacity as an elected individual from those made as a member of the party he was elected to represent, and conclude that it cannot therefore be said that the notices contain sufficient precision to enable individuals - journalists and broadcasters in this case - to regulate their conduct.

The Commission recalls that it has considered orders of a similar nature to the present notices in the case of Purcell v. Ireland (No. 15404/89, Dec. 16.4.91, to be published in D.R. 70). In that case the Commission found that the broadcasting restrictions in Ireland were "prescribed by law" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention. Although similar, the Commission finds that the restrictions in the present case cannot be exactly equated with those in the case of Purcell. In particular, the orders in the case of Purcell derived from an express statutory power to make orders relating to matters "likely to promote, or incite to, crime or [which] would tend to undermine the authority of the State". Moreover, the Irish provisions were brought into effect by a statutory instrument which had to be laid before both Houses of the Irish parliament, and

could be annulled by either House (see p. 14 of the Commission's decision).

The Commission recalls that the European Court of Human Rights has identified at least three requirements which flow from the phrase "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention. The phrase "prescribed by law" in Article 10 para. 2 (Art. 10-2) must be given the same interpretation as the phrase "in accordance with the law" (Eur. Court H.R., Silver judgment of 25 March 1983, Series A no. 61, p. 33, para. 85). Thus a norm must be formulated with sufficient precision; the phrase "in accordance with the law", or the equivalent phrase "prescribed by law", does not merely refer back to domestic law, but also relates to the quality of the law, and a law conferring a discretion is not in itself inconsistent with the requirement of foreseeability provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity (Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, p. 30, para. 61 with further references).

In the present case the Commission is faced with notices whose authority derives from statutory sources in the case of the IBA and a Licence and Agreement in the case of the BBC. The Government and the applicants agree that this difference is of no significance. In any event, notwithstanding the applicants' criticism of the state of domestic law, the Commission notes that there is no contention in the present case that the interference was not in accordance with domestic law, as the House of Lords ultimately established. As to whether the "law" at issue in the present case has the required "quality", the Commission notes that the authority to make notices is of a general, blanket nature. It sets no limits on the type of directions the minister may give, and does not require the directions to be made for any particular purpose. The Commission must, however, look not only to the source of the authority for the making of the directions, but also to the directions themselves, as it is the directions which laid down the restrictions which had, and have, to be complied with by broadcasters.

The Commission recalls that accessibility and foreseeability are two of the requirements inherent in the phrase "prescribed by law" in Article 10 para. 2 (Art. 10-2) of the Convention (see, for example, Eur. Court H.R., Sunday Times judgment of 26 April 1979, Series A no. 30, p. 31, para. 49). The accessibility of the directions is not in question in the present case: the source of the authority for the respective notices is generally available, and the notices made by the Home Secretary were announced in Parliament, debated in Parliament, and the subject of widespread comment in the press. As to foreseeability, even if the original notices contained areas of uncertainty, such as the impact on elected individuals speaking on matters unrelated to terrorism, the Commission finds that the subsequent clarification by the Home Office to the broadcasting authorities rendered the extent of the interference with the applicants' rights apparent to all concerned.

Accordingly, the Commission finds that the interference was "prescribed by law" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

The Commission must next consider whether the interference with the applicants' rights pursued a "legitimate aim". The Government point to the address by the Home Secretary to the House of Commons on 19 October 1988, in which he referred to the restrictions as part of the campaign against terrorism. They recall that Lord Templeman in the House of Lords also recognised this aim. They see the aim of the notices as principally the protection of "the interests of national security" and "the prevention of disorder or crime". The applicants accept the importance of securing peace in Northern Ireland, but see a clear distinction between other measures introduced in 1988 to combat terrorism and the present restrictions, in that the broadcasting

restrictions do not in fact further the struggle against terrorism in any way. They consider that the real aim of the restrictions is to represent to the public that Sinn Féin, a lawful political party, is a party which deserves no support.

The Commission recalls that the restrictions in the present case refer in terms to proscribed organisations and to named organisations which, although not prohibited, are known to have connections with unlawful organisations. Whilst the effect and effectiveness of the restrictions must be considered in the context of the discussion of the "necessity" for the directions, there is no indication in the present case that the directions were anything other than part of the measures taken to combat terrorism which were made in good faith. The Commission accepts that the aim of the restrictions is legitimate.

Finally, the Commission must consider the question of the necessity for the interference with the applicants' Article 10 (Art. 10) rights. The European Court of Human Rights has summarised the major principles of its case-law on the "necessity" test in Article 10 (Art. 10) of the Convention as follows:

"(a) Freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10 (Art. 10), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Freedom of expression, as enshrined in Article 10 (Art. 10), is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.

(b) These principles are of particular importance as far as the press is concerned. While it must not overstep the bounds set, inter alia, in the 'interests of national security' or for 'maintaining the authority of the judiciary', it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'.

(c) The adjective 'necessary', within the meaning of Article 10 para. 2 (Art. 10-2), implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the law and the decisions applying it, even those given by independent courts. The [Convention organs] are therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10 (Art. 10).

(d) The [Convention organs]' task, in exercising [their] supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 (Art. 10) the decisions they delivered pursuant to their power of appreciation. This does not mean that [their] supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what [they have] to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'."

(Eur. Court H.R., Sunday Times (No. 2) judgment of 26 November 1991, Series A no. 217, p. 29, para. 50)

The Government submit that it cannot be right that the applicants have the right to exercise their professions completely free from Government interference. They accept that the directions given to broadcasting authorities will not directly reduce the number of terrorist acts in Northern Ireland or in the United Kingdom, but state that they are intended to reduce the impact and influence of the advocates and supporters of such acts, and that they correspond to the need to prevent the giving of overt support for certain organisations. They refer to the Purcell case, where the Commission found that the restrictions were designed to "deny representatives of known terrorist organisations and their political supporters a possibility of using the broadcast media as a platform for advocating their cause, encouraging support for their organisation and conveying the impression of their legitimacy". They consider that, notwithstanding the compliance by broadcasters with their various statutory or contractual duties, interviews were broadcast before the notices were issued which gave terrorists and their apologists a spurious air of authority.

The Government regard the extensive experience of the executive and the legislature of terrorist matters as justifying a greater margin of appreciation than might be the case in other spheres involving restrictions on freedom of expression. They nevertheless point out that the restrictions on the applicants' freedom of expression are less onerous than those in the Purcell case, in that they are very precisely targeted and they do not apply during elections.

The applicants, in connection with the "necessity" test and throughout their observations, essentially challenge the proportionality of the interference. They underline the enormous penalty for failure to comply with the restrictions - loss of the right to broadcast - and lack of evidence on the part of the Government to show (i) that Sinn Féin in fact obtained favourable media coverage before the restrictions; (ii) that interviews with terrorists increase their "standing", or (iii) that there is any public support for the restrictions.

Both parties discuss at some length the position of the "proportionality" test in domestic law. The Government submit in essence that the judgments of the House of Lords in the present case indicate that the domestic courts take broadly the same approach to freedom of expression as the Convention organs. The applicants submit that the House of Lords merely pay lip service to freedom of expression whilst in fact failing signally to undertake any serious examination of the conflicting interests involved.

The Commission notes that the extent of the interference in the present case is limited. Whilst the applicants are affected by the directions in the way they perform their functions (see above), the directions given on 19 October 1988 do not have any impact on the words that can be spoken or the images that can be shown on television or the radio. The Commission accepts that it must be inconvenient for journalists to have to use the voice of an actor for the broadcasting of certain interviews, and appreciates that the logic of the continuation of the directions is not readily apparent when they appear to have very little real impact on the information available to the public. The very absence of such impact is, however, a matter the Commission must bear in mind in determining the proportionality of the interference to the aim pursued.

The Commission further notes that although the Government do not contend that the interference with the applicants' rights is a prime element in the struggle against terrorism, it can be regarded as one aspect of a very important area of domestic policy. The European Court of Human Rights has referred to the special problems involved in combating terrorism (Eur. Court H.R., Brogan and others judgment of 29 November 1988, Series A no. 145, p. 33, para. 61; p. 27, para. 48;

Brannigan and McBride judgment of 26 May 1993, Series A no. 258, p. 50, para. 47, with further references), and the Commission has no doubt as to the difficulties involved in striking a fair balance between the requirements of protecting freedom of information - especially the free flow of information from the media - and the need to protect the State and the public against armed conspiracies seeking to overthrow the democratic order which guarantees this freedom and other human rights.

The Commission finds, in the circumstances of the present case and bearing in mind the margin of appreciation permitted to States, the limited extent of the interference with the first to sixth applicants' rights and the importance of measures to combat terrorism, that it cannot be said that the interference with the first to sixth applicants' freedom of expression was disproportionate to the aim sought to be pursued. The interference in the case of the seventh applicant is of an even more limited nature, and the Commission finds that the above reasoning applies, *mutatis mutandis*, to him.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants also allege a violation of Article 13 (Art. 13) of the Convention. Article 13 (Art. 13) provides 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."

The Commission recalls Article 13 (Art. 13) cannot be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention: the grievance must be an arguable one in terms of the Convention. Moreover, the European Court of Human Rights has pointed to the link between the notion of "arguable claim" in its own case-law and the notion of "manifestly ill-founded" in Article 27 (Art. 27) of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, paras. 52 and 54). The Commission has found the applicants' claims under Article 10 (Art. 10) to be manifestly ill-founded. It also finds the claims under Article 13 (Art. 13) to be not arguable.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission

President of the Commission

(H.C. Krüger)

(C.A. Nørgaard)

A N N E X

List of applicants

1. BRIND, Donald Malcolm, British, born in 1947, television producer for the BBC, resident in London
2. EMERY, Fred Albert, British, born in 1933, television journalist for the BBC, resident in London
3. GRAHAM, Alexander, British, born in 1953, independent television producer and editor, resident in London

4. LEONARD, Victoria, British, independent radio producer, resident in London
5. McGWIRE, Scarlett, British, born in 1954, broadcast journalist, resident in London
6. PILGER, John Richard, Australian, television and radio presenter and journalist, resident in London
7. NASH, Thomas Edward, British, born in 1933, clerk, resident in London