CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36408/97
by Liam Gerard AVERILL
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 6 July 1999 as a Chamber composed of

Mr J.-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mrs F. Tulkens,
Mr K. Jungwiert,
Mrs H.S. Greve, *Judges*,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 March 1997 by Liam Gerard Averill against the United Kingdom and registered on 9 June 1997 under file no. 36408/97;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 25 February 1998 and the observations in reply submitted by the applicant on 5 June 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, an Irish citizen born in 1965, is currently serving a prison sentence in the Maze prison, Northern Ireland.

He is represented before the Court by Mr William A. McNally, a solicitor practising in Magherafelt, Northern Ireland.

A. Particular facts of the case

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

On 24 April 1994, at about 6.15 p.m., four men wearing balaclava masks, some of whom were armed with firearms, entered the bungalow of the Murphy family and, seizing the keys to their white Vauxhall Cavalier car, drove off in it. Ten minutes later, at 6.25 p.m., the white Vauxhall Cavalier car stopped in front of two cars parked side by side on Main Street, Garvagh and began shooting at the occupants. The drivers of both vehicles were killed, and a third person in the passenger seat of one vehicle was wounded.

At about 6.55 p.m. the police found a white Cavalier car, which had been set on fire. They found in the car, two black and a dark blue balaclava masks, a pair of black gloves and four cartridge cases.

At 7.20 p.m., at an Army checkpoint on Halfgayne Road, some eight miles from the spot where the abandoned vehicle was found, a red Toyota car was stopped, in which there were three men, Martin and Patrick Kelly and the applicant. About 7.45 p.m. a number of police officers arrived under the command of Sergeant Ford. On being questioned by Sergeant Ford, the applicant stated that he had been helping the Kelly brothers with sheep since around 1 p.m., that he had washed at the Kellys' and had a fry there for tea. He stated that he was going for a drink in the town. The applicant was arrested under section 14(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1989 and taken to Gough Barracks, Armagh. Access to a solicitor was deferred pursuant to section 45 of the Northern Ireland (Emergency Provisions) Act 1991 ("the 1991 Act") for a period of 24 hours. Thereafter until he was charged the applicant was seen daily by a solicitor.

Shortly after arrival at Gough Barracks, head hair combings were taken from the applicant and sent for forensic examination along with the clothes he was wearing at the time of his arrest.

The applicant was interviewed by police officers who cautioned him before each interview in terms of Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 ("the 1988 Order"). He was told that:

> "[y]ou do not have to say anything unless you wish to do so but I must warn you that if you fail to mention any fact which you rely on in your defence in court, your failure to take this opportunity to mention it may be treated in court as supporting any relevant evidence against you. If you wish to say anything, what you say may be given in evidence."

The applicant was asked if he understood the caution and made no reply. He made no reply to questions about his movements on 24 April 1994, and about fibres from the balaclavas and gloves found on his hair and clothing. He maintained silence throughout the interview and throughout 36 further interviews, which took place between 25 and 30 April 1994. The applicant was denied access to legal advice during police interviews.

On 28 April 1994, during interview no. 20, a police constable cautioned the applicant pursuant to Article 6 of the 1988 Order, requesting him to account for his presence at Halfgayne Road about the time the murder of the two men in Garvagh was alleged to have been committed. He was warned that if he failed or refused to do so, a court, judge or jury might draw such inference from his failure or refusal as appears proper. The applicant made no response and refused to sign the written request. During the same interview, he was cautioned, pursuant to Article 5 of the 1988 Order, in respect of adverse inferences which might be drawn from any failure to account for a number of fibres found on his person by means of a hair combing which linked him to the commission of an offence. During interview no. 36 on 30 April 1994, a caution was made under Article 5 in respect of fibres on the applicant's clothes which were forensically linked to material found in a Vauxhall Cavalier car allegedly used by the culprits. The applicant made no reply and refused to sign the written request.

On 1 May 1994 the applicant was charged, *inter alia*, with the murder of M.A.S., and J.A.W.Mc., the attempted murder of P.J.S. and with possession of two loaded AKM assault rifles with intent. The applicant pleaded not guilty and was tried before Hutton LCJ sitting without a jury.

The prosecution case linking the applicant to the hijacking of the car and the shooting incident was based on forensic evidence. The link was between a balaclava and the gloves found in the car and the applicant. According to the prosecution, the fibres found in the hair combings taken from the applicant and found on his clothing matched exactly the fibres of the two black balaclavas and the fibres of the pair of gloves found in the car.

The forensic expert witness called by the prosecution testified that:

> "Considering the presence of fibres to match two separate fibre sources from the car on [the applicant] and his clothing would strongly support the proposition that there had been direct and intimate contact with the black masks and gloves from the car."

At his trial the applicant gave evidence to the effect that at the relevant time he had been working with sheep at Kellys' farm on the afternoon of 24 April and had then stayed at the farm for a meal until about 7 p.m. He further said that on the preceding day, 23 April, when he was at work, he had worn black gloves and a rolled up balaclava as protective clothing.

The applicant called several witnesses to support his alibi, including the Kelly brothers.

On 20 December 1995 the applicant was convicted of two counts of murder, one count of attempted murder, one count of possession of two rifles and a handgun together with a quantity of ammunition with intent, contrary to Article 17 of the Firearms (Northern Ireland) Order 1981, one count of assaulting and falsely imprisoning Michael Murphy, and

one count of hijacking a Vauxhall Cavalier motor car, contrary to section 2(1)(a) of the Criminal Jurisdiction Act 1975.

In his judgment the judge found the applicant guilty, having regard to circumstantial evidence of a forensic nature linking the applicant with the Vauxhall car allegedly used by the gunmen and the applicant's presence in the vicinity of the shooting (some fourteen miles from its location). The forensic evidence consisted of the following:

(a) twelve fibres were found in the head hair of the applicant matching exactly the fibres from one of the balaclava masks and 14 fibres were found in the head hair of the applicant matching exactly the fibres from the pair of black gloves;

(b) one fibre matching exactly the fibres from one of the black balaclava masks was found on the jacket of the applicant and 12 fibres matching exactly the fibres from the pair of black gloves were found on the jacket of the applicant;

(c) four fibres matching the fibres from the pair of black gloves were found on the outside of the jeans of the applicant and large numbers of fibres matching exactly the fibres of the pair of black gloves were found in both side pockets of the jeans of the applicant;

(d) one fibre exactly matching the fibres of one of the black balaclava masks was found in each of the side pockets of the jeans of the applicant.

The judge accepted the evidence of the prosecution forensic expert witness that the presence of fibres to match the two separate fibre sources from the car, namely the black balaclava masks and the pair of black gloves on the head hair and on and in the clothing of the applicant, strongly supported the proposition that there had been direct and intimate contact between him and one or both of those black balaclava masks and the pair of black gloves.

Moreover, the judge relied on the "very strong adverse inference" which he drew against the applicant under Articles 3 and 5 of the 1988 Order:

"Yet the [applicant] made no reply to the questions repeatedly put to him throughout the interviews and gave no information whatsoever about his movements on 24 April and no account of wearing a balaclava and gloves at his work on 23 April, but gave detailed evidence in respect of these matters for the first time at his trial. I therefore draw a very strong adverse inference against him under Article 3 of the 1988 Order. … it would have been a simple and easy thing for him to have told these matters to the interviewing police officers.

Mr Harvey [counsel for the applicant] submitted that the court should not draw an adverse inference under Article 3 by reason of the fact that when the [applicant] was stopped at the vehicle check-point on the evening of 24 April he told Sergeant Ford about 7.45 p.m., when asked how he came to be in the company of the other two men, that he had been giving them a hand with sheep all afternoon since around 1 p.m., and that he later told Sergeant Ford about 8.20 p.m., that he had been at Kellys' all afternoon working with sheep since about 1 p.m., that he had a fry at Kellys', and that he had got washed in that house. Mr Harvey submitted that the purpose of Article 3

was to stop an accused at his trial putting forward an ambush defence. As the [applicant] had told the police who stopped him at the vehicle check-point that he had been at Kellys' working with sheep all afternoon, the purpose of Article 3 had been achieved, and that it would therefore be wrong to draw an adverse inference against the [applicant] under the Article because he refused in interviews to repeat to the police his defence or to answer questions about it. I reject that submission. … Notwithstanding that the [applicant] told Sergeant Ford in brief terms that he had been working at the Kellys' farm since 1 p.m., common sense clearly indicates that if the defence which he advanced in the witness box was true, he would have told the police of it after he was cautioned in Gough Barracks under Article 3 and was questioned at length about his movements on 24 April and was asked if he had an explanation for the fibres found on his hair and clothing. In addition I draw a very strong adverse inference against the [applicant] under Article 5 of the 1988 Order. The [applicant] failed to account for these fibres after each caution was read ... although he gave an explanation at the trial that he had been wearing gloves and a balaclava at his work on 23 April, which explanation was clearly designed and intended to show that the fibres found on his hair and on his clothing came from gloves and a balaclava which he was wearing ... on 23 April. This was an explanation which he could easily have given to the constable who served the Article 5 caution on him, and by reason of this failure to do so I draw a very strong adverse inference against him that the evidence which he gave at the trial about wearing a balaclava and gloves at work on 23 April was false. Mr Harvey submitted that I should not draw that inference because the cautions lacked clarity and detail ... and ... did not give the [applicant] sufficient information to enable him to understand that he was being requested to account for the presence of fibres from a pair of gloves and from a balaclava ... on his hair and clothing. ... I do not accept that submission. It follows from the very strong inferences which I have drawn against the [applicant] under Article 3 and Article 5 that I reject the evidence of the witnesses who sought to give the [applicant] an alibi by stating in the witness box that he was in the Kellys' farm at Halfgayne Road during the period when the gunmen were going to the Murphys' bungalow, imprisoning Mr Murphy and hijacking his car, murdering M.A.S. and J.A.W.Mc. ... For the same reason I reject the evidence of Sean McIldowney that the accused wore a balaclava and gloves at work on 23 April."

The judge also drew a very strong adverse inference against the applicant under Article 5 of the 1988 Order:

"Having regard to the matters clearly put and explained to the [applicant] ... I think it is clear that the accused knew perfectly well that the Article 5 cautions referred to the fibres from the balaclava masks and pair of gloves found in the gunmen's cars, but he failed to give the explanation which he later put forward at trial and this failure gives rise to the very strong adverse inference which I draw against him."

The judge did not draw any inference under Article 6 of the 1988 Order.

The judge also held:

"It follows from the very strong adverse inferences which I have drawn against the [applicant] under Article 3 and Article 5 that I reject the evidence of the witnesses who sought to give the [applicant] an alibi by stating in the witness box that he was in the Kellys' farm ... during the period when the gunmen were ... murdering ... and

> escaping from the place where the car was set on fire. The [applicant] had ample time to get to the Kellys' farm before 7 p.m. from the place where the car had been set on fire. ...
>
> In addition, and apart from the very strong adverse inferences which I draw under Articles 3 and 5, having seen them in the witness box I regarded the [applicant] and Patrick Kelly as dishonest and unreliable witnesses whose evidence I did not believe."

The applicant appealed on the grounds, *inter alia*, that the trial judge had erred in drawing an adverse inference under Article 3 where the accused was questioned about his movements on 24 April since he had already given an account of his movements to Sergeant Ford when he was stopped on that evening; that the inference drawn from his failure to give an explanation of the forensic findings concerning the fibres found on him by mentioning to the police that he had been wearing a balaclava and gloves on the day before the killing should not have been one of significant weight; that the police did not give him sufficient information to enable him to understand the nature of the forensic evidence for which he was requested to account; and finally, that it was not open to the judge to conclude that the reason the applicant did not account for his whereabouts on 24 April and for the fact that he had worn gloves and a balaclava when he was at work on 23 April was not because it was simply his policy not to speak to the police.

In its judgment of 3 January 1997 the Court of Appeal (MacDermott LJ) of Northern Ireland agreed with the trial judge in the following terms:

> "… [T]he drawing of an inference under Article 3 is not automatic. … Before an inference may be drawn against an accused, the tribunal of fact must be of the view that it is proper to do so. This will allow for consideration of the adequacy of a single statement of a relevant defence and whether any explanation for a failure to repeat it is acceptable. Moreover, the court which invokes Article 3 can weigh the strength of the inference to be drawn against the accused."

MacDermott LJ continued:

> "As we have already held, the mere recital on a single occasion of the gist of a defence on which an accused subsequently relies on trial will not usually prevent the invocation of Article 3. Whether such a statement will prompt the court not to draw an inference against the accused will depend on an evaluation by the tribunal of fact of all the relevant circumstances including the accused's explanation for his failure to repeat the statement of his defence on interview. ... Where ... allegations are put to a suspect in interview which, if unchallenged, are clearly indicative of his guilt and where he fails, until trial, to put forward his answers to these or an explanation of them consistent with his innocence, this will justify the drawing of a strong inference against him. In this case the significance of the forensic evidence could scarcely be more obvious and important. It called for the production of the appellant's explanation at the earliest moment. The failure to produce that explanation on a point of such obvious and immediate importance justified the drawing of a strong adverse inference against the appellant. When that failure went unexplained (save by reference to a policy which was neither justified nor elaborated upon by the [applicant]) the drawing of a strong adverse inference against him was virtually inevitable. Mr Harvey [counsel for the applicant] submitted that the manner in which the forensic evidence

was described by the [police] must have confused the appellant as to the nature of the forensic evidence which existed against him. Like the learned trial judge we do not accept this proposition. Mr Harvey submitted that it was not open to the learned trial judge to conclude that such a policy [by the applicant not to speak to the police] did not exist. We reject this argument. ... A person may have and apply such a policy but he must realise that the tribunal of fact may then draw an adverse inference from his silence. This [applicant] was seen daily by his solicitor after an initial 24-hour deferral and if he chose to remain silent it was his free choice. This does not avoid the possibility of Articles 3 or 5 being used to his disadvantage, however. To accept that a suspect may successfully rely on a 'policy' of silence to avoid the adverse effect of the Articles would 'drive a coach and four through the statute'."

In conclusion, MacDermott LJ stated:

"We are entirely satisfied that the learned trial judge approached his task in a careful and critical manner, he adverted to all the evidence and he was satisfied of the guilt of the [applicant] having not only heard the evidence but observed the witnesses. In our judgment these convictions were in no way unsafe or unsatisfactory."

The Court of Appeal dismissed the applicant's appeal.

B. Relevant domestic law

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

Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 provides as relevant:

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

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

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

(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, paragraph (2) applies.

(2) Where this paragraph applies: …

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

may

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

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

(3) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention."

Article 5 of the Criminal Evidence (Northern Ireland) Order 1988 provides as relevant:

"(1) Where:
(a) a person is arrested by a constable, and there is –
(i) on his person; or
(ii) in or on his clothing or footwear; or
(iii) otherwise in his possession; or
(iv) in any place in which he is at the time of his arrest,
any object, substance or mark, or there is any mark on any such object; and
(b) the constable reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the constable; and
(c) the constable informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and
(d) the person fails or refuses to do so,
then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, paragraph (2) applies.

(2) Where this paragraph applies:
(a) the court, in determining whether to commit the accused for trial or whether there is a case to answer; and
(b) the court or jury, in determining whether the accused is guilty of the offence charged,
may
(i) draw such inferences from the failure or refusal as appear proper;
(ii) on the basis of such inferences, treat the failure or refusal as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure or refusal is material. ...

(4) Paragraphs 1 and 2 do not apply unless the accused was told in ordinary language by the constable when making the request mentioned in paragraph (1)(c) what the effect of this Article would be if he failed or refused to comply with the request. ..."

2. Provisions governing access to a solicitor

Section 45 of the Northern Ireland (Emergency Provisions) Act 1991 provides as relevant:

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

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

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

(5) Any delay in complying with a request under subsection (1) above is only permitted if:

(a) it is authorised by an officer of at least the rank of superintendent; and
(b) it does not extend beyond the relevant time.

(6) In sub-section (5) above "the relevant time" means

(a) where the request is the first request made by the detained person under sub-section (1) above, the end of the period referred to in section 44(6) above; or
(b) where the request follows an earlier request made by the detained person under that sub-section in pursuance of which he has consulted a solicitor, the end of the period of forty-eight hours beginning with the time when that consultation began. …

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

(a) will lead to interference with or harm to evidence connected with a scheduled offence or interference with or physical injury to any person; or
(b) will lead to the alerting of any person suspected of having committed such an offence but not yet arrested for it; or
(c) will hinder the recovery of any property obtained as a result of such an offence; or
(d) will lead to interference with the gathering of information about the commission, preparation or instigation of acts or terrorism; or
(e) by altering any person, will make it more difficult:
(i) to prevent an act of terrorism; or
(ii) to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism."

There is no right at common law to have a solicitor present during a police interview. Such a right has been conferred by paragraph 6.8 of Code C made pursuant to Article 65 of the Police and Criminal Evidence Act 1989 ("PACE") on those who are not arrested or detained under section 14(1) of the Prevention of Terrorism (Temporary Provisions) Act 1989. However, by section 66(12) of PACE it was expressly provided that the Code affording that right does not apply to those arrested and detained for terrorist offences. In particular, having regard to the legislative context, the House of Lords have recently declined to hold

that such persons have any common law right to have a solicitor present during interview (*R. v. Chief Constable of the RUC* ex parte *Begley* [1997] 1 Weekly Law Reports, p. 1475).

COMPLAINTS

The applicant complains that the drawing of adverse inferences under the 1988 Criminal Evidence Order rendered his trial unfair, contrary to Article 6 § 1 of the Convention, infringed his right not to incriminate himself and deprived him of his right to silence and to be presumed innocent, contrary to Article 6 § 2.

Further, the applicant complains that the refusal to allow his solicitor to be present during police interviews was in breach of Article 6 of the Convention.

PROCEDURE

The application was introduced on 24 March 1997 and registered on 9 June 1997.

On 2 December 1997 the European Commission on Human Rights decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 25 February 1998. The applicant replied on 5 June 1998, after an extension of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

1. The applicant complains that he was denied a fair trial in breach of Article 6 of the Convention, which provides as relevant:

> "1. In the determination of … of any criminal charge against him, everyone is entitled to a fair and public hearing … by an independent and impartial tribunal established by law.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; … ."

2. The Government invited the Court to declare the applicant's complaints inadmissible on the ground that his application is an abuse of the right of application within the meaning of

Article 35 § 3 of the Convention. In this connection, they drew attention to the fact that the applicant escaped from prison shortly after Christmas 1997 and has still not been apprehended.

The applicant disputed the validity of this objection to the admissibility of his application.

The Court observes that the application was introduced by the applicant on 24 March 1997 following the decision of the Court of Appeal on 3 January 1997 rejecting his appeal against conviction. The object of that application was to secure a ruling from the Convention institutions that he had been tried and convicted in breach of the requirements of Article 6 of the Convention. Although the applicant's escape from lawful detention after conviction by a competent court was wrongful, it does not render illegitimate his interest in obtaining from the Court a ruling on the violation he is alleging (see, *mutatis mutandis*, the Van der Tang v. Spain judgment of 13 July 1995, Series A no. 321, p. 17, § 53).

The Court accordingly rejects the Government's objection to the admissibility of the application under this head.

3. The Government submitted that the facts of the applicant's case clearly establish that there has been no violation of the rights invoked by the applicant. With reference in particular to the Court's John Murray v. the United Kingdom judgment of 8 February 1996 (*Reports of Judgments and Decisions* 1996-I), they argued that there was convincing and unchallenged forensic evidence linking the applicant to the balaclavas and gloves found in the car used for the shootings and that that evidence clearly called for an explanation from the applicant when questioned. However, he did not provide either Sergeant Ford, who questioned him at the Army checkpoint on 24 April 1994, or the police officers who questioned him under caution between 24 April 1994 and 1 May 1994, with any details of the matters on which he later relied at his trial. Nor did he provide any explanation at all prior to his trial as to how the fibres might have come to be in his hair and on his clothes. He did not mention that he had been wearing a balaclava and gloves at work the day before the shootings when invited to account for the presence of the fibres under Article 5 of the 1988 Order.

In the Government's view, the very strong inferences drawn by the trial judge under Articles 3 and 5 of the 1988 Order were, on the facts, both justified and a matter of common sense.

The applicant stated that his silence was central to his conviction and undermined his own testimony as well as that of the witnesses whom he called in his defence. The applicant referred in this latter connection to the fact that the trial judge rejected the evidence of the defence witnesses who confirmed his alibi, on the ground that he had drawn a very strong inference from the applicant's silence. For the same reason, the trial judge rejected the testimony of the defence witness who confirmed that the applicant had been wearing a balaclava and black gloves at his place of work the day before the shooting incident.

The applicant maintained that he provided the essential elements of his alibi defence when questioned by Sergeant Ford at the checkpoint on 24 April 1994 and answered all other questions asked of him with as much detail as he was requested to do.

Furthermore, the applicant encouraged the Court to have regard to the fact that there are many reasons why some persons in Northern Ireland prefer to remain silent in the face of police questioning, including the absence of safeguards against unfairness and a lack of trust in the police force. In his submission, it is wholly inappropriate to equate an accused's silence with guilt or to assume that silence is probative of guilt. He asserted that in his case such an equation led to the rejection of his evidence, his witnesses' evidence and finally the drawing of very strong inferences against him under Articles 3 and 5 of the 1988 Order.

The Government drew attention to the fact that neither the applicant nor his lawyers pleaded before the domestic courts that deferral of access to a solicitor for a period of 24 hours had resulted in unfairness. They noted that the judgments at first instance and on appeal contained one sentence on this point. Further, by the time the applicant had been cautioned under Article 5 of the 1988 Order he had already had access to his solicitor, but he chose to remain silent as a matter of "policy". There is no suggestion that he would have provided answers if his solicitor had been present. On that account they submitted that there is no arguable issue under Article 6 § 1, whether alone or in conjunction with Article 6 § 3 (c), in relation to the absence of a solicitor during interview.

The applicant submitted that the complete denial of any access to a solicitor for the first 24 hours and the absence of a solicitor during any interview with the police is incompatible with the provisions of Article 6 § 1, in conjunction with Article 6 § 3 (c), of the Convention. In this connection the applicant highlighted the fact that a person arrested under the Prevention of Terrorism Act in England had the right to have a solicitor present during questioning and that the interview was recorded.

The Court considers, in the light of the parties' submissions, that the above complaints raise complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

S. Dollé
Registrar

J.-P. Costa
President