AS TO THE ADMISSIBILITY OF

Application No. 14707/89
by Malachy MULLIN
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 13 February 1989 by Malachy MULLIN against the United Kingdom and registered on 28 February 1989 under file No. 14707/89;

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, Malachy Mullin, is a citizen of the United Kingdom, born in 1970 and resident in Sixmilecross, 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 about 00.30 hrs. on 20 August 1988, as unmarked civilian buses were travelling along the main road from Ballygawley to Omagh in County Tyrone, an explosive device of approximately 100 lbs. (approximately 45 kilos) concealed by the side of the road was detonated by a command wire which ran for 300 metres to a battery pack located on a hill overlooking the road. In the explosion, eight soldiers, travelling in one of the buses from Aldergrove airport, Belfast, to their base in Omagh, were killed and another 27 in the bus were injured, some seriously. The Tyrone Brigade of the Provisional IRA subsequently admitted responsibility for the explosion.

On the basis of the information which became available to the police after the explosion, the police believed that the applicant, who lived in Tyrone close to where the explosion took place, was involved in the atrocity. Accordingly, he was arrested under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 at his home at 04.10 hrs. on 24 August 1988. He was told that he was being arrested under section 12 of the 1984 Act as he was suspected of

involvement 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. He was released at 18.30 hrs. on 25 August 1988.

He asked to see a solicitor but access to a solicitor was delayed under section 15 of the Northern Ireland (Emergency Provisions) Act 1987 and he was released before the authorised periods of delay had expired.

At the outset of the first interview, which began at 09.50 hrs. on 24 August, he was told that the police were making inquiries into the bomb explosion on 20 August and that he was believed to be involved in the explosion. He was asked where he was on the evening of 19 August and about his membership of the Provisional IRA. He remained silent. At a later interview he gave an account of his movements for the evening of 19 August and during 20 August, which he repeated at subsequent interviews. These accounts included accounts of the movements, at some points during the period in question, of his brothers. He declined to sign the interview notes.

COMPLAINTS

The applicant 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 13 February 1989 and registered on 28 February 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 paras. 1 (c) and 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 complains that his arrest and detention under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 from 24 to 25 August 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."
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> "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 precise basis of the applicant's complaint under Article 5 para. 3 (Art. 5-3) of the Convention is unclear. As the applicant was released after 1 day 14 hours and 20 minutes detention the requirement to bring him before a judge did not arise. Referring to 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) and the Commission's established case-law cited at para. 57 of that judgment, they submit that the applicant's release within 2 days of his arrest was compatible with the requirements of Article 5 para. 3 (Art. 5-3) of the Convention. As the facts of the case disclose no breach of this provision, the provisions of Article 5 para. 5 (Art. 5-5) have no application. In reply, the applicant submits that the Government have made no attempt to justify the length of his detention or shown how long it might reasonably have taken to dispel the suspicions they held against him when he was arrested. He considers that his case is indistinguishable from the Brogan and Others judgment as regards the breaches found by the Court in that case of Article 5 paras. 3 and 5 (Art. 5-3, 5-5) of the Convention.

According to the constant case-law of the Commission, the requirement of promptness in Article 5 para. 3 (Art. 5-3) of the Convention means that arrested persons must be brought before a judge, or other officer authorised by law to exercise judicial power, without undue delay, the guarantees of Article 5 para. 3 (Art. 5-3), together with Article 5 para. 1(c) (Art. 5-1-c), providing essential safeguards against arbitrary deprivation of liberty and prolonged police or administrative detention (No. 2894/66, Dec. 6.10.66, Yearbook 9 p. 564, Nos. 11209/84, 11234/84, 11266/84 and 11386/85, Brogan, Coyle, McFadden and Tracey v. the United Kingdom, Comm. Report 14.5.87, paras. 101-108).

The question whether or not the requirement of promptness in Article 5 para. 3 (Art. 5-3) has been satisfied must be assessed in each case according to its special features, the maximum time limit for such detention, even in the most exceptional circumstances, being no more than four days. In the light of these considerations and the particular facts of the present case, the Commission concludes that the period of detention experienced by the applicant does not disclose any appearance of a breach of Article 5 para. 3 (Art. 5-3) of the Convention. Accordingly this part of the application is manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Regarding the applicant's complaint under Article 5 para. 5 (Art. 5-5) of the Convention that he had no enforceable right to compensation in domestic law for the alleged breach of Article 5 para. 3 (Art. 5-3) of the Convention, as the Commission has concluded that this latter allegation is manifestly ill-founded, the applicant is not entitled to such compensation. Accordingly his complaint under Article 5 para. 5 (Art. 5-5) of the Convention must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. 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 THE APPLICATION INADMISSIBLE.

Secretary to the
Second Chamber

(K. ROGGE)

President of the
Second Chamber

(S. TRECHSEL)