AS TO THE ADMISSIBILITY OF

Application No. 14604/89
by Gerard BURNS
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 19 January 1989 by Gerard BURNS against the United Kingdom and registered on 1 February 1989 under file No. 14604/89;

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, Gerard Burns, is a citizen of Ireland, born in 1953 and resident in Belfast, Northern Ireland. He is represented before the Commission by Messrs. John J. Rice & Co., Solicitors, Belfast.

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

At about 11.00 hrs. on 7 September 1988, William Quee was shot dead outside his shop in North Belfast. A few minutes later, at about 11.10 hrs., the applicant, who is suspected of being a member of the Irish People's Liberation Organisation (IPLO), a terrorist group, and who has convictions for terrorist offences, tried to run away from a car similar to the car seen to have been used by the gunman but, as he did so, was arrested by a police constable under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984.

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 and, in particular, was suspected of having been involved in a shooting incident.

He was taken initially to the local police station and from there to Castlereagh Police Office where he was given, on his arrival, a copy of the notice to persons in police custody.

His detention was extended by the Secretary of State by three days until 11.10 hrs. on 12 September 1988. He was released without charge at 18.15 hrs. on 11 September 1988.

He saw a solicitor on 9 and 10 September 1988.

At the outset of his first interview, which took place at the local police station and which began at 11.50 hrs. on the morning of his arrest, he was told that the police were enquiring into the shooting incident at the shop in North Belfast that morning. He was asked if he knew why he had been arrested and he nodded his head. He was also asked to explain his actions that morning. He gave an account. His clothes were taken for forensic examination, swabs were taken from his hands, face and hair and a sample of hair was also taken. He was taken to Castlereagh Police Office in the afternoon.

Later that day he was again interviewed and again told that the police were enquiring into the murder of the shopkeeper that morning. On the basis of information received by the police from witnesses, about which he was told, the account of his presence in the area which he had given in the morning was challenged and he was again asked about his movements. He made no comment and answered none of these questions. At subsequent interviews he was asked further about his presence in the area of the shooting, about what he was reported to have said to the police after he had been arrested and whether he was a member of the IPLO or INLA. He answered some questions by nodding or shaking his head, but generally refused to answer questions about the murder, or about his presence or the presence of others in the area. At one point the applicant said that he would not admit his involvement in the murder even if he had been caught with a gun in the car or there was forensic evidence. He sought to avoid eye contact with the interviewing officers; sometimes he appeared to be restless. After he had seen his solicitor on the morning of 9 September, he described to the police what his movements had been on the morning of the murder and he was further questioned about them.

COMPLAINTS

The applicant complains that his right to liberty was violated by his arrest and detention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 19 January 1989 and registered on 1 February 1989. After a preliminary examination of the case by the Rapporteur, the Commission considered the admissibility of the application on 6 May 1989. It decided to join this application to 15 others of a similar nature, to give notice of the application to the respondent Government and to invite the parties to submit their written observations on the admissibility of the application, pursuant to Rule 42 para. 2 (b) of the Rules of Procedure (former version).

The Government lodged their observations on 21 September 1989, after an extension of the time-limit fixed for their submission. The applicant did not reply to these observations, save to confirm by letter of 2 January 1990 that he maintained his application.

On 6 February 1990 the Commission considered the state of proceedings in the 16 joined cases. It decided to adjourn its examination of the admissibility of the 15 other cases pending the judgment of the Court in the case of Fox, Campbell and Hartley v. the United Kingdom, in the light of those applicants' complaint that they had been victims of a violation of Article 5 para. 2 of the Convention. As the present applicant had not made a complaint under this provision his case was not adjourned. The Commission informed

the Government that it did not consider it necessary to hold a hearing in this case.

On 12 May 1990 the Commission again examined the state of proceedings in the present application. It considered that the applicant's complaint raised an issue under Article 5 para. 3 of the Convention and requested the parties to submit specific written observations on this point, not dealt with in the previous observations. The Government submitted their observations on 22 June 1990, to which the applicant's representatives replied on 11 July 1990.

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

THE LAW

The applicant complains that his arrest and detention under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 from 7 to 11 September 1988 was in breach of his right to liberty. He does not specify which aspects of Article 5 (Art. 5) of the Convention, guaranteeing the right to liberty and security of person, were allegedly violated in his case.

The Commission considers that the case raises an issue under the promptness requirement of Article 5 para. 3 (Art. 5-3) of the Convention, which provides as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article 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."

The Government contend that the precise basis of the applicant's complaint is unclear and that the complaint itself is manifestly ill-founded. The applicant submits that the length of his detention was unreasonable in all the circumstances of the police investigation and that the basis of his claim is clear under Article 5 para. 3 (Art. 5-3) of the Convention.

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 appliants 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 7 hours and about 5 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 complaint, examined under Article 5 para. 3 (Art. (Art. 5-3) 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 the case inadmissible has been established.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION ADMISSIBLE

without prejudging the merits of the case.

Secretary to the Second Chamber	President of the Second Chamber
(K. ROGGE)	(S. TRECHSEL)