AS TO THE ADMISSIBILITY OF

Application No. 14779/89
by Peter CLIFFORD
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 7 February 1989 by Peter CLIFFORD against the United Kingdom and registered on 15 March 1989 under file No. 14779/89;

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, Peter Clifford, is a citizen of the United Kingdom, born in 1955 and resident in London, England. 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.

On 8 November 1988 the applicant was stopped by the army as he was leaving the Maze prison which he had been visiting. The car in which he was travelling was searched by members of the army under section 15 of the Northern Ireland (Emergency Provisions) Act 1978 and a suspicious substance, which was thought to be an explosive substance, was found in the glove compartment. At 18.48 hrs. the applicant was arrested by the police under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984. On his arrest he was told that he was being arrested under section 12 of that Act as he was suspected of being involved in terrorism.

The applicant was taken to Armagh Police Office. On his arrival there he was given a copy of the notice to persons in police custody. Forensic tests were carried out on the substance. He was released without charge at 13.00 hrs. on 9 November, when the results of the forensic tests showed that the substance was not an explosive or otherwise an unlawful substance. The applicant states that the substance was found to be salt.

The applicant had the opportunity to ask for access to a solicitor but did not request such access and was not seen by a solicitor during his detention.

At the outset of his first interview, which began at 20.35 hrs. on 8 November 1988, he was told that a substance had been found in the car in which he had travelled to the Maze and in which he was leaving the prison, that it was believed that the substance was an explosive and that it was being forensically tested. The applicant denied any knowledge of this and he was asked to account for his movements that day. During his detention forensic tests were carried out on his clothing and, with his consent, swabs were taken from him, for tests.

COMPLAINTS

The applicant complains that he was the victim of a breach of Article 5 para. 1 (c) of the Convention as his arrest and detention were not for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence, but for the purpose of ascertaining more about a small quantity of a white substance found in the glove compartment of the car in which he was travelling as a passenger and which clearly was not owned by him. He also complains that his detention was in breach of the promptness requirement of Article 5 para. 3 of the Convention and that he had no right to compensation for these alleged breaches of Article 5 paras. 1 (c) and 3, contrary 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 7 February 1989 and registered on 15 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 was 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 contends that 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 the small quantity of a white substance found in the car in which he was travelling. 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 from 8 to 9 November 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 is unclear. Moreover, given the fact that he was released after 18 hours and 12 minutes detention, the requirement to bring him before a judge did not arise. Referring to the aforementioned judgment of the Court in the case of Brogan and Others and the Commission's established case-law cited at para. 57 of that judgment, they submit that the applicant's release in less than 24 hours after his arrest was compatible with the requirements of Article 5 para. 3 (Art. 5-3) of the Convention. As the facts of this case disclose no breach of Article 5 (Art. 5) of the Convention, 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 the facts of his case are sufficiently distinguishable from that of Brogan and Others to warrant the finding of a breach of Article 5 paras. 3 and 5 (Art. 5-3, 5-5) even after such a short period of detention.

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.

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 THE APPLICATION INADMISSIBLE.

Secretary to the
Second Chamber

(K. ROGGE)

President of the
Second Chamber

(S. TRECHSEL)