Application No. 12689/87
by Brendan DAVISON
against the United Kingdom

The European Commission of Human Rights sitting in private on 11 April 1991, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 27 January 1987 by Brendan DAVISON against the United Kingdom and registered on 2 February 1987 under file No. 12689/87;

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, Mr. Brendan Davison, was an Irish citizen born in 1955. He was represented in the proceedings before the Commission by Mr. P. J. Finucane, solicitor, Belfast. The applicant was killed on 25 January 1988.

The applicant was arrested at his home on 21 October 1986 at 06.10 hours by a police officer. He was arrested under Section 11 of the Northern Ireland (Emergency Provisions) Act 1978 on grounds of being a suspect terrorist. Section 11(1) states that "Any constable may arrest without warrant any person whom he suspects of being a terrorist".

He was taken to Castlereagh Police Office and informed that under Section 11 of the 1978 Act he could be held detained for up to 72 hours and could see a solicitor after 48 hours.* The applicant states that he was interrogated at regular intervals during his detention and was released at 16.20 hours on 22 October 1986.

He was not informed of the reasons for his arrest, apart from being told that he was arrested under Section 11 of the 1978 Act as a suspect terrorist. Nor was he informed of any charge against him. He

was not brought before a judge or other officer authorised by law to exercise judicial power or given any opportunity for release on bail.

COMPLAINTS

The applicant pointed out that the United Kingdom Government withdrew its derogation under Article 15 on 22 August 1984.

He complained that his arrest was in breach of Article 5 paras. 1 and 2 of the Convention. In particular, he stated that his arrest was solely for the purpose of interrogating him and that his detention was not justified under Article 5 para. 1 (a), (b), (c) or (d).

He further complained that Section 11 permits arrest and detention solely on grounds of suspicion, as opposed to the requirement of reasonable suspicion under Article 5 para. 1 (c) of the Convention.

He further complained that, since the provisions of the Convention are not part of the domestic law, he was not able to bring any proceedings to determine the lawfulness of his arrest and detention, in breach of Article 5 para. 4, and that he was therefore denied an enforceable right to compensation in breach of Article 5 para. 5.

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* Section 11 (3) states as follows:

"A person arrested under this section shall not be detained in right of the arrest for more than seventy-two hours after his arrest, and section 132 of the Magistrates' Courts Act (Northern Ireland) 1964 and section 50(3) of the Children and Young Persons Act (Northern Ireland) 1986 (requirement to bring arrested person before a magistrates' court not later than forty-eight hours after his arrest) shall not apply to any such person."

The applicant further claimed that the lack of an enforceable right to compensation constitutes a breach of Article 13.

As regards domestic remedies, the applicant accepted that the arresting officer had a suspicion that the applicant was a suspected terrorist and that the arrest was executed lawfully under Northern Ireland law.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 27 January 1987 and registered on 2 February 1987.

On 7 October 1987 the Commission decided to bring the application to the notice of the respondent Government and to adjourn the case.

On 20 September 1988 the agent of the respondent Government informed the Commission that the applicant had been killed on 25 January 1988. Requests to the applicant's lawyer on 6 October 1988 and 18 December 1990 as to whether the application should be continued and, if so, who were the next of kin, remained unanswered.

REASONS FOR THE DECISION

The applicant complained of his arrest and detention under Section 11 of the Northern Ireland (Emergency Provisions) Act 1978.

The Commission recalls that the successor of a deceased applicant cannot claim a general right that the examination of an

application be continued by the Commission (cf. No. 8261/77, Kofler v. Italy, Comm. Rep. 9.10.82, D.R. 30 p. 5). The essential point is whether, bearing in mind the nature of the particular application, the successor can be considered as having a sufficient interest to justify the further examination of the application on his or her behalf.

In the present case, there has been no reply to questions as to whether the application should be continued. The Commission notes that the complaint related to the applicant's detention from 21 to 22 October 1986. Such an application is intimately linked to the person of the deceased applicant. Even if a successor had been presented, such successor could not have claimed a sufficient legal interest in the circumstances of the present case to justify further examination.

The Commission concludes therefore that it is no longer justified to continue the examination of this application, within the meaning of Article 30 para. 1 (c) of the Convention. It further considers that respect for Human Rights as defined in the Convention does not require the continuation of the examination.

For these reasons, the Commission unanimously

DECIDES TO STRIKE THE APPLICATION OFF ITS LIST OF CASES.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)