CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 28135/95
by Gerard MAGEE
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 14 September 1999 as a Chamber composed of

Mr J.-P. Costa, *President*
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, *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 22 May 1992 by Gerard Magee against the United Kingdom and registered on 4 August 1995 under file no. 28135/95;

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 28 October 1997 and the observations in reply submitted by the applicant on 31 January 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Irish citizen, born in Northern Ireland in 1964. He is currently living in Belfast, having served a prison sentence at the Maze Prison, Northern Ireland.

The applicant is represented before the Court by Ms Patricia Coyle, a solicitor practising in Belfast with the firm Madden and Finucane.

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

A. Particular circumstances of the case

On 16 December 1988, early in the morning, the applicant was arrested at his home under section 12 of the Prevention of Terrorism Act 1984 ("the 1984 Act") in connection with an attempted bomb attack on military personnel. The applicant was taken to Castlereagh Police Office. He claims that, on arrival, he immediately requested to see his solicitor. Access was delayed pursuant to section 15 of the Northern Ireland (Emergency Provisions) Act 1987 ("the 1987 Act"). At 9.15 a.m. the applicant was examined by a doctor who advised him that if he had any complaints to make he should tell the doctor when he made his round the following morning. The applicant was cautioned pursuant to Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 ("the 1988 Order"). Unfamiliar with this new law, the applicant again requested a consultation with a lawyer and this request was refused.

On the same day the applicant was interviewed five times by two pairs of detectives. These interviews took place between 10.55 a.m. and 1 p.m., 2 p.m. and 4 p.m., 4 p.m. and 6 p.m., 7.35 p.m. and 9.30 p.m., and 9.30 p.m. and 12 midnight.

At 8.21 a.m. on 17 December 1988 the applicant complained to the same doctor he had seen the day before of ill-treatment during the second and third interviews on the previous day. The doctor recorded in his notes that the applicant had alleged that he had been repeatedly slapped and punched occasionally in the back of the head during the 2nd and 3rd interviews and that he had been punched a few times in the stomach. The doctor gave the applicant two tablets (a mild analgesic) and prescribed four such tablets a day if required. Pursuant to this complaint, at 9.15 a.m. a police inspector visited the applicant's cell and took a note of the applicant's complaints.

Subsequently, the applicant's 6th, 7th and 8th interviews took place between 9.30 a.m. and 1 p.m., 2 p.m. and 4.20 p.m., and 7.30 p.m. and 12 midnight. During the 6th interview the applicant broke his silence and gave detailed answers to a number of questions admitting to his involvement in the assembly and planting of the bomb. During the 7th interview the applicant signed a lengthy statement which described in considerable detail his part in the conspiracy to plant and detonate the bomb.

At 8.28 a.m. on 18 December 1988 the applicant was visited by the same doctor who asked the applicant if he had any further allegations of ill-treatment and the applicant replied that he had not. The applicant was then interviewed about another matter between 10 a.m. and 12.45 p.m. At 1 p.m. the applicant was allowed to consult with his solicitor, who made notes on the applicant's allegations of ill-treatment. The solicitor chose not to pass these complaints on to the police. The applicant was then interviewed for the last time between 2 p.m. and 5 p.m. about an unrelated matter. The applicant was medically examined that evening at 8.20 p.m. by

another doctor whose notes indicated that the applicant had said “no allegations of ill-treatment since he had been last seen by a doctor”. That doctor also noted that there was no sign of injuries.

On 19 December 1988 the applicant was taken to another police station where he was given a medical examination by another doctor. That doctor's note records the applicant's detailed allegations of assaults and ill-treatment which allegedly took place on 16 December 1988. No objective evidence of injury was noted.

On 19 December 1988 the applicant, along with others, was charged at Belfast Magistrates' Court with conspiracy to cause explosions, possession of explosives with intent, conspiracy to murder and membership of the Irish Republican Army.

On 3 March 1989 the applicant, through his solicitor, made an official written statement to the Complaints and Discipline Branch of the Royal Ulster Constabulary complaining about his ill-treatment by one pair of detectives while at Castlereagh Police Office.

On 17 September 1990 the trial of the applicant and his co-accused began at Belfast Crown Court before a single judge sitting without a jury. The applicant pleaded not guilty. The prosecution case was based on the admissions made by the applicant in interview and, in particular, the written statements signed by him.

On 3 October 1990, when the prosecution were about to lead evidence based on the applicant's admissions and statement made during questioning, the applicant applied under section 8 of the Northern Ireland (Emergency Provisions) Act 1978 (as amended) to have the admissions and statement made during questioning excluded on the basis of the applicant's alleged ill-treatment. A *voir dire* began and the applicant gave evidence as to his treatment, particularly by one pair of detectives during interviews 2, 4 and 6 while in Castlereagh Police Office. Electrostatic Document Analysis (“ESDA”) evidence was also led which the applicant submitted demonstrated glaring defects in the authentication of the interview notes which recorded his responses to the detectives' questions. All the relevant witnesses, including the applicant, the police officers alleged to have been involved in the ill-treatment and the doctors who had seen the applicant, gave evidence. The *voir dire* ended on 23 October 1990 when the trial judge rejected the application, admitted the applicant's admissions and statement into evidence and adjourned his detailed judgment in these respects.

The applicant did not subsequently give evidence at the trial. However, the trial judge cautioned the applicant pursuant to Article 4 of the 1988 Order as regards adverse inferences which could be drawn from this failure to give evidence.

On 21 December 1990 the trial judge gave judgment.

He first outlined his detailed reasoning behind his decision further to the *voir dire*. He noted that the only evidence against the applicant was the admissions and statement made while in custody at Castlereagh Police Office and that there was no forensic evidence against him. However, it was also noted that the applicant's admissions and statement were entirely consistent with the evidence presented in relation to others charged (and later convicted) with offences arising out of the same incident. The trial judge summarised the applicant's evidence of ill-treatment and this summary was later accepted on appeal by the applicant as constituting an accurate account of his evidence in this respect.

The trial judge then commented on that evidence. He noted, *inter alia*, that the applicant did not mention the names of or attempt to describe the pair of detectives in respect of whom he complained to the doctor on the morning of 17 December 1988; that the applicant had not mentioned to the doctor on that morning the "cigarette treatment", which the applicant had submitted during the *voir dire* was the treatment which frightened him most; that there were inconsistencies in the accounts of ill-treatment given by the applicant to the doctor on that morning and his evidence at trial; that not one single objective sign of the ill-treatment which the applicant alleged was found by any of the doctors who examined the applicant; and that on the morning of the 18 December 1990 the applicant did not make any complaint about ill-treatment despite the fact that he claimed he had suffered the worst treatment of all during the previous day.

Although there had been a period when the monitoring screens (which relayed pictures from cameras in the interview rooms to a central control room) had not been monitored by the duty inspector on Saturday morning, the trial judge found that this did not coincide with the applicant's evidence as to when he was ill-treated on that day and the trial judge found it impossible to accept that ill-treatment of the nature alleged by the applicant could have gone on without it being picked up by the cameras in the room where the applicant was questioned. On the question of general credibility the judge found that the applicant had repeatedly lied to the court, whereas the detectives involved were not at all shaken by a rigorous cross-examination in their firm denials of the allegations made by the applicant. As to the ESDA evidence, the trial judge found that it did not substantiate the applicant's submission as to the lack of authenticity of the interview notes.

Accordingly, the trial judge rejected the applicant's allegations of ill-treatment and found that there was no reason to exclude the applicant's admissions or statement made during his detention in Castlereagh Police Office. As to the probative value of the applicant's statement, the trial judge found that it was sufficiently detailed to establish the several charges against the applicant and that he was fully entitled to convict the applicant on that basis. On 11 January 1991 the applicant was sentenced to 20 years' imprisonment.

On 8 February 1993 the applicant's appeal against conviction, challenging the trial judge's conclusions as to the allegations of ill-treatment and as to the ESDA evidence, was heard by the Court of Appeal of Northern Ireland. That court noted that in such cases the question to be answered is whether the court is satisfied that it is not a reasonable possibility that the accused was ill-treated. It noted, *inter alia*, that the trial judge had had the great advantage of seeing the applicant give evidence, that both an accused and the police officers involved can equally have an incentive to lie and that many facts are capable of being looked at in two or more ways, but they must be considered sensibly and realistically. Having reviewed the applicant's evidence and the trial judge's conclusions in that respect, that court concluded that it was satisfied that the applicant had not been ill-treated and that his conviction was neither unsafe nor unsatisfactory. Accordingly, on 16 June 1993 the applicant's appeal was rejected.

On 17 December 1993 the applicant's appeal against his sentence was rejected.

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 accused's failure to mention particular facts when questioned, charged, etc.

"(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 or jury, 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."

Article 4 of the 1988 Order, relating to when an accused is called upon to give evidence at trial, provides as relevant:

"(1) At the trial of any person (other than a child) for an offence paragraphs (2) to (7) apply unless

(a) the accused's guilt is not in issue, or

(b) it appears to the court that the physical or mental condition of the accused makes it undesirable for him to be called upon to give evidence;

but paragraph (2) does not apply if, before any evidence is called for the defence, the accused or counsel or a solicitor representing him informs the court that the accused will give evidence.

(2) Before any evidence is called for the defence, the court

(a) shall tell the accused that he will be called upon by the court to give evidence in his own defence, and

(b) shall tell him in ordinary language what the effect of this Article will be if

(i) when so called upon, he refuses to be sworn;

(ii) having been sworn, without good cause he refuses to answer any question;

and thereupon the court shall call upon the accused to give evidence.

(3) If the accused

(a) after being called upon by the court to give evidence in pursuance of this Article, or after he or counsel or a solicitor representing him has informed the court that he will give evidence, refuses to be sworn, or

(b) having been sworn, without good cause refuses to answer any question, paragraph (4) applies.

(4) The court or jury, in determining whether the accused is guilty of the offence charged, may

(a) draw such inferences from the refusal as appear proper;

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

2. Provisions governing access to a solicitor

The relevant provisions at the time of the applicant's trial governing the right of access to legal advice were contained in section 15 of the Northern Ireland (Emergency Provisions) Act 1987, which provided 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) as soon as practicable after he has become a person to whom the subsection applies.

(3) A request made by a person under subsection (1), and the time at which it is made, shall be recorded in writing unless it is made by him while at a court and being charged with an offence.

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

....

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

(d) will lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or

(e) by alerting any person, will make it more difficult –

(i) to prevent any 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..."

The delay had to be authorised by a police officer of at least the rank of superintendent (section 15(5)(a)) and the detained person had to be told the reason for the delay (section 15(9)(a)). The courts in Northern Ireland have taken the view that the 1988 Order should not be read subject to section 15 of the 1987 Act, since the 1988 Order had come into force after the 1987 Act, and Parliament had not intended that an inference which was permitted by Article 3 of the 1988 Order could not be drawn because of the withholding of the right to access to legal advice given by section 15 of the 1987 Act.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was ill-treated while held in Castlereagh Police Office and, as a result, answered questions and signed a statement confessing to his involvement in a terrorist offence.

He also submits that such treatment is part of an administrative practice which permits, condones and encourages brutality towards detainees in police custody in Northern Ireland.

` He further complains about the inadequacy of the legislation enabling the prosecution of public officials responsible for torture, of the procedure for investigating complaints of ill-treatment against the police in Northern Ireland and of the system of monitoring the treatment of detainees in police stations. He also argues that the conditions under which detainees are held in Castlereagh Police Office amounted to a failure to protect his rights under Article 3 of the Convention. The applicant invokes Article 3 alone or in conjunction with Article 13 in respect of these complaints.

The applicant also complains under Article 6 of the Convention that the admission of evidence, obtained in contravention of Article 3 of the Convention, contravened his right to a fair trial.

In addition, the applicant complains about the legislation in Northern Ireland which allows inferences to be drawn from the failure of an accused to give oral evidence in court. He further complains that he was required to give evidence in the *voir dire* without having had access to all medical and custody records in the possession of the prosecution relating to his custody following his arrest and before he was charged in court. Finally, the applicant complains about the lack of presence of a lawyer while he was being questioned and about a denial of consultation with a lawyer in a situation where incriminating inferences can be drawn from an accused's silence during questioning.

The applicant further complains under Article 14 in conjunction with:

(a) Article 3 of the Convention that the treatment he received while detained amounted to discrimination on grounds of national origin, association with a national minority, religious views and/or political views (including the applicant's membership of Sinn Féin);

(b) Article 6 of the Convention that the denial of access to a lawyer, when negative inferences can be drawn from his silence during questioning and during his interviews with the police, amounts to discrimination on grounds of national origin and/or association with a national minority, since suspects arrested in England or Wales under prevention of terrorism

legislation may, on request, have a lawyer present during interviews and do not have such adverse inferences drawn against them.

PROCEDURE

The application was introduced on 22 May 1992 and registered on 4 August 1995.

On 30 June 1997 the European Commission of Human Rights decided to communicate the application to the Government.

The Government's written observations were submitted on 28 October 1997 after an extension of the time-limit fixed for that purpose. The applicant replied on 30 January 1999, also 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

As to compliance with the six-month rule (Article 35 § 1 of the Convention)

1. The Government requested the Court to verify the date of introduction of the application from the standpoint of compliance with the six-month rule set out in Article 35 § 1 of the Convention.

The Court notes that in a letter post-dated 22 May 1992 the applicant notified the Commission of the substance of the complaints which form the subject of his application. At that stage the applicant's appeal had not yet been heard by the Court of Appeal. The Court of Appeal dismissed the applicant's appeal against conviction on 16 June 1993 and his appeal against sentence was rejected by the same court on 17 December 1993. The applicant subsequently wrote to the Secretariat of the European Commission of Human Rights on 6 June 1994 explaining that he had exhausted domestic remedies. An application form was forwarded to him on 4 July 1994. The form was completed and returned to the Secretariat on 27 July 1995 following authorised extensions of the time-limit for submission of the application. The application was registered on 4 August 1995.

In view of the above, the Court takes as the date of introduction of the application the date of the applicant's first communication to the Commission, namely 22 May 1992. In that letter the applicant clearly indicated his intention to lodge an application with the Commission and the nature of his complaint. Even if the applicant did not renew his contact with the Secretariat of the Commission until 6 June 1994, it is to be observed that during the intervening period he was actively engaged in pursuing his appeals against conviction and sentence. In these circumstances the Court does not have to pronounce on whether the final decision in the applicant's case for the purposes of the running of the six-months rule in Article 35 § 1 of the Convention was constituted by the Court of Appeal's decision of

6 June 1993 or its later decision of 17 December 1993. For this reason the Court considers that the applicant has lodged his application within the six-month period prescribed by Article 35 § 1 of the Convention.

2. The applicant complained under Article 3 of the Convention that he was ill-treated while held in Castlereagh Police Office and, in consequence, answered questions and signed a confession statement admitting to his involvement in a terrorist bombing attempt. Article 3 of the Convention provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The applicant submitted with reference to, *inter alia*, a report dated 19 November 1994 of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("CPT"), and the conclusions and recommendations of the United Nations Committee against Torture contained in its report of 17 November 1995, that the detention regime in Castlereagh Police Office is intended to be coercive in order to break the will of the detainee to remain silent and contravenes international human rights norms. In his submission, there is well-documented and independent evidence which points to the fact that a deliberate strategy is pursued to refuse detainees access to solicitors, in particular during interview, in order to build up psychological pressure on them to make incriminating statements.

The applicant drew attention to the fact that he had been subjected to a lengthy period of detention during which he had to endure prolonged questioning by rotating teams of skilled interrogators in defiance of his clear indication on the first day of his detention that he wished to exercise his right to silence. Further, notwithstanding his complaint of ill-treatment to the police doctor, he was subjected to another interrogation session between 9.30 a.m. and 1 p.m. on 17 December 1988 led by the same detectives who had ill-treated him. Significantly, it was during the latter interview that he began to incriminate himself.

The Government replied that the applicant's allegations that he had been ill-treated while in detention had been firmly rejected by the trial judge following a detailed and comprehensive review of the evidence on the *voir dire*. The judge was satisfied beyond reasonable doubt that the allegations were unfounded and that the applicant had lied in his testimony. Furthermore, the Court of Appeal carefully reviewed the evidence and gave due consideration to the submissions advanced by the applicant's counsel. In all material respects, the Court of Appeal rejected the applicant's challenges to the trial judge's findings.

The Court notes at the outset that the requirements of a police investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals. It recalls in this connection that Article 3 of the Convention enshrines one of the fundamental values of the democratic societies and, as such, it prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Article 3 admits of no exception to this fundamental value and no derogation from it is permissible under Article 15 of the Convention even having regard to the imperatives of a public emergency threatening the life of a nation or to any suspicion, however well-founded, that a person may be involved in terrorist or other criminal activities (see, for example, the Tomasi v. France judgment of

27 August 1992, Series A, no. 241-A, p. 42, § 115, the Aydın v. Turkey judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, p. 1891, § 81, and, most recently, the Selmouni v. France judgment of 28 July 1999, to be published in *Reports* 1999, § 88).

Against this background, the Court observes that the applicant has requested it to deduce from the materials which he has supplied that he was ill-treated during the period he spent in custody in Castlereagh Police Office. He has not, however, drawn attention in his written submissions to the specific examples of ill-treatment which he relied on before the Belfast Crown Court in the *voir dire* proceedings and on appeal before the Court of Appeal. No reference has been made in his application to the alleged instances of physical and verbal violence and the threat of being burned with a lighted cigarette, which featured prominently in his challenge to the admissibility of his signed confession statement before the domestic courts.

The Court has carefully examined the materials on which the applicant relies in support of his complaint under Article 3 of the Convention. However, while noting the criticism which has been directed against the holding conditions in Castlereagh Police Office by bodies such as the CPT, the British Irish Rights Watch, the Independent Commissioner for the Holding Centres and the United Nations Committee against Torture, the Court observes that its task in the instant case is to determine whether the applicant has substantiated his claim that he is a direct victim of a breach of Article 3 and, in particular, whether the treatment to which he alleges he was subjected exceeded the minimum level of severity required to bring it within the scope of that provision (see, among many other authorities, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, § 162 and the Aerts v. Belgium judgment of 30 July 1998, *Reports* 1998-V, p. 1966, § 64).

In this regard the Court must give due weight to the facts established by the domestic courts in the light of the arguments and evidence adduced before them. It notes in this connection that it is not normally within the province of the Court to substitute its own assessment of the facts for that of domestic courts and, as a general rule, it is for these courts to assess the evidence before them (see, for example, the Klaas v. Germany judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30). The Court observes that the trial judge had the benefit of seeing the applicant in the witness box and of assessing at first hand his credibility and demeanour. The trial judge also heard the evidence of the police officers whom the applicant alleged had ill-treated him in detention, as well that of the doctor who had examined the applicant. The applicant was legally represented and was able to probe the testimony of the police officers with a view to exposing inconsistencies and weaknesses in it. The trial judge evaluated the evidence from an objective, open and cautious perspective, observing as he did that police officers also had an incentive to conceal the truth of what occurred during an interrogation. The trial judge in a carefully reasoned judgment found, at the conclusion of the adversarial proceedings on the *voir dire,* that the applicant's allegations had been fabricated. The judge's handling of the evidence and his findings thereon were fully reviewed on appeal and the Court of Appeal unhesitatingly upheld his conclusions.

In the Court's opinion the applicant has not submitted any concrete evidence which could call into question the findings of the domestic courts and add weight to his allegations that he was the victim of treatment prohibited by Article 3 of the Convention. On that account the Court considers that this complaint is manifestly ill-founded and hence inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. The applicant further submitted with reference to Article 3 of the Convention that ill-treatment of detainees is part of an administrative practice in Northern Ireland and that there is no effective legislative framework in Northern Ireland for prosecuting police officers guilty of ill-treatment or for investigating complaints against them or for monitoring the treatment of detainees in police stations.

The Court recalls that it has found the applicant's earlier complaint under Article 3 of the Convention inadmissible as being manifestly ill-founded. It considers also that the applicant has not substantiated any of the broader allegations which he now makes in the context of the same provision. For that reason it rejects them as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and therefore inadmissible under Article 35 § 4 thereof.

3. The applicant alleged that his rights under Article 6 of the Convention had been breached in several respects. Article 6 provides as relevant:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time 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:
> ...
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (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; ..."

(a) <u>As to the admissibility of the applicant's complaint that he was convicted in breach of Article 6 § 1 on the basis of evidence obtained in violation of Article 3</u>

The applicant contended that police officers who questioned him at Castlereagh Police Office compelled him to sign a confession statement in circumstances which gave rise to a breach of the guarantees afforded to suspects under Article 3 of the Convention. The decision of the domestic courts to admit that statement in evidence against him violated his right to a fair trial.

The Court recalls that it has found that the applicant's allegation of ill-treatment to be unsubstantiated. It refers in this respect to the reasons supporting that conclusion. It concludes that, having regard to the safeguards in place for assessing the merits of the allegation, the trial judge's decision to rule the confession statement admissible cannot be impugned from the standpoint of Article 6 § 1 of the Convention.

The Court considers therefore that the applicant's complaint is manifestly ill-founded and therefore inadmissible under Article 35 §§ 3 and 4 of the Convention.

(b) As to the admissibility of the applicant's complaints under Article 6 § 1 taken in conjunction with Article 6 § 3(c)

The applicant complained that under the 1988 Order, adverse inferences may be drawn from an accused's failure to give oral evidence in court or to respond to police questioning during detention. In the latter context an accused is not entitled to have a solicitor present during interview notwithstanding the inherent compulsion in the Order to incriminate oneself.

The applicant asserted that he had been compelled to incriminate himself before he had received any legal advice and that it was only after the police had obtained his signed confession statement that he was allowed to consult with his solicitor. The applicant argued that the Court's John Murray v. the United Kingdom judgment of 8 February 1996 (*Reports* 1996-I, p. 30) was authority for the proposition that he should have had access to his solicitor at the initial stages of police interrogation. He stressed that the disputed confession statement constituted the sole evidence against him at his trial and the sole basis of his conviction, in contrast to the applicant John Murray against whom there existed a formidable body of evidence. In the applicant's submission the only effective safeguards against a forced confession would have been the presence of his solicitor during interview and the tape recording of the interviews. The applicant drew attention to the fact that these facilities were available to individuals in England who were detained under the same legislation for the same offences. However, in his case, he had not even been permitted to obtain legal advice before the interview process commenced.

The Government, with reference to the above-mentioned John Murray judgment, contended that the applicant, unlike Mr Murray, was not faced with the choice between exercising his right to silence and mentioning facts which might later be relied on in his defence at his trial. The Government highlighted the fact that the applicant made a series of admissions during interview and did not advance at his trial any facts which could have been, but were not, mentioned when interviewed. Accordingly, it was not open to the applicant to claim that under the effect of the Article 3 caution he was trapped in what the Court described in its John Murray judgment as a “fundamental dilemma” which could only be resolved on the basis of legal advice. In the Government's submission the real issue was whether the applicant, although denied access to a solicitor until 1 p.m. on 18 December 1988, received a fair trial. In this regard the Government reiterated their earlier contention that there had been a full, lengthy and adversarial hearing on the *voir dire* in order to determine whether the applicant's admissions and signed confession should be ruled inadmissible; that the trial judge had expressly found on the evidence that the applicant had lied; and that the applicant had been treated fairly and properly throughout the interview process at Castlereagh Police Office.

The Government opined that, contrary to the applicant's submission, neither the presence of a solicitor at his interviews nor the tape recording of the interviews would have provided a sure or even effective safeguard against the kind of impropriety he alleged. In their view, such facilities would not prevent an accused such as the applicant from fabricating allegations that he had been ill-treated.

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.

(c) As to the admissibility of the applicant's complaint under Article 6 § 1 in conjunction with Article 6 § 3(b)

The applicant further complained that he was required to give evidence on the *voir dire* without having had access to all medical and custody records in the possession of the prosecution relating to the period during which he was in custody prior to being charged. In his submission this greatly handicapped his challenge to the voluntariness of his confession statement in the *voir dire* proceedings, especially since he had to give evidence first.

The Court notes that the applicant did not raise this complaint either at first instance or on appeal, notwithstanding its relevance to his allegations of ill-treatment during detention. It also notes that the applicant has supplied copies of decisions of the Northern Ireland courts which, although in conflict, nevertheless demonstrate that this issue is a proper one on which to seek a determination. It must be concluded that the applicant has failed to exhaust domestic remedies in respect of this particular complaint as required by Article 35 § 1 of the Convention. The complaint is accordingly inadmissible under Article 35 § 4 of the Convention.

4. The applicant further complained under Article 14 of the Convention in conjunction with Article 6 that he was discriminated against on grounds of national origin and/or association with a national minority. Article 14 of the Convention provides in relevant part:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... national ... origin, association with a national minority, ... or other status."

The applicant submitted that suspects arrested and detained in England and Wales under prevention of terrorism legislation can have access to a lawyer immediately and entitlement to his presence during interview. In addition, in England and Wales at the relevant time incriminating inferences could not be drawn from an arrestee's silence during interview in contradistinction to the position under the 1988 Order in Northern Ireland.

The Court considers, in the light of the parties' submissions, that the above complaint raises 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.

5. The applicant maintained that the procedures for investigating complaints against the police in Northern Ireland, for monitoring the treatment of detainees held in Castlereagh Police Office and for prosecuting officials responsible for torture amounts to a denial of an effective remedy in breach of Article 13 of the Convention read in conjunction with Article 3. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court recalls that it has declared the applicant's complaints under Article 3 inadmissible as being manifestly ill-founded. In these circumstances it considers that the applicant cannot rely on an arguable claim of a violation of Article 3 on which to base an

allegation of a breach of Article 13, it being noted that the latter provision only applies if an applicant can be said to have an "arguable claim" of a violation of the Convention (see, for example, the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

It follows that this part of the application must be dismissed as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

7. The applicant maintained in addition that recourse by the security forces to treatment prohibited by Article 3 of the Convention against detainees on account of their national origin or association with a national minority amounted to unlawful discrimination. In his submission, he was victim of unlawful discrimination since the treatment to which he was subjected during detention was as a result of his religion and political views. He invoked Article 14 of the Convention in conjunction with Article 3.

The Court reiterates that it has found that the applicant's allegation that he was ill-treated during detention to be manifestly ill-founded and on that account inadmissible. It also notes that the applicant's assertions that he was the victim of unlawful discrimination are in no way substantiated. The Court considers that his complaint under this head is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaints (i) that the fairness of his trial was prejudiced since he was convicted on the basis of a confession statement obtained in circumstances in which he was held for a prolonged period in incommunicado detention and refused access to a solicitor (ii) that whereas detainees in England and Wales suspected of involvement in terrorist offences were guaranteed access to a solicitor and, at the relevant time, adverse inferences could not be drawn from their silence, such rights did not extend to similar detainees in Northern Ireland;

DECLARES INADMISSIBLE the remainder of the application.

S. Dollé
Registrar

J.-P.Costa
President