AS TO THE ADMISSIBILITY OF

Application No. 14671/89
by Martin Desmond McCONNELL
against the United Kingdom

The European Commission of Human Rights sitting in private on 11 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
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 2 February 1989 by Martin Desmond McCONNELL against the United Kingdom and registered on 20 February 1989 under file No. 14671/89;

Having regard to:

- reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the Commission's decision of 5 September 1989 to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits;

- the observations submitted by the respondent Government on 16 February 1990 and the observations in reply submitted by the applicant on 15 May 1990;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of the United Kingdom, born in 1963. He is an unemployed trainee accountant and resides, at present, in County Tyrone, Northern Ireland.

He is represented in the proceedings before the Commission by Mr. J. Christopher Napier, solicitor, Belfast.

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

The applicant was arrested at his home in Cookstown on 31 October 1988 at 07.06 hours. He was taken to Gough Barracks, Armagh, where he was detained. He was interviewed six times by police officers on 31 October 1988 about a number of specific crimes, including involvement in the transport of a bomb in July 1988. He was also interviewed on 1, 2, and 3 November. He was released from custody at 19.30 hours on 3 November 1988. He was thus detained for 3 days, 12 hours and 24 minutes.

He was informed at the time of his arrest that he was being arrested under Section 12 (1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1984.

Section 12 of the 1984 Act provides, inter alia, as follows:

"12 (1) [A] constable may arrest without warrant a person whom he has reasonable grounds for suspecting to be

...

(b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this Part of this Act applies;

...

(3) The acts of terrorism to which this Part of this Act applies are

(a) acts of terrorism connected with the affairs of Northern Ireland;

...

(4) A person arrested under this section shall not be detained in right of the arrest for more than forty-eight hours after his arrest; but the Secretary of State may, in any particular case, extend the period of forty-eight hours by a period or periods specified by him.

(5) Any such further period or periods shall not exceed five days in all.

(6) The following provisions (requirement to bring accused person before the court after his arrest) shall not apply to a person detained in right of the arrest."

During his detention, the applicant was seen by a medical practitioner on seven occasions. The applicant was visited by his solicitor on two occasions: on 31 October 1988 from 14.21 hours to 14.35 hours and on 1 November from 19.38 to 20.10 hours.

On 17 January 1989, pursuant to Section 12 (1)(b) of the 1984 Act, the applicant was again arrested at his home at 07.00 hours and brought to Gough Barracks where he was interviewed by officers who had interviewed him during the previous period of detention. He had six interviews about specific crimes on 17 January, followed by six interviews on 18 January, and a further six on 19 January. At his

first interview, which commenced at 11.21 hours on 17 January, he was informed that the police were enquiring into the attempted murder of a woman police constable on 5 December 1988 at Cookstown, and that the police were aware that he had an input into the bombing. He was released on 20 January at 21.00 hours after five interviews. He was thus detained for 3 days and 14 hours.

Although initial access to a solicitor was delayed because it was believed that such a visit would lead to interference with the investigation, the applicant was subsequently visited by his solicitor on 19 January 1989 from 13.50 hours to 14.10 hours and again on 20 January 1989 from 15.46 hours to 16.30 hours.

COMPLAINTS

The applicant complains that his arrest under Section 12 of the Act constituted a violation of Article 5 paras. 2, 3 and 5 of the Convention.

The applicant submits that the Notice of Derogation lodged with the Secretary General of the Council of Europe on 23 December 1988 was unjustified since no war or public emergency threatened the life of the nation. In addition, the derogation is in excess of what is strictly required by the exigencies of the situation and an abuse of the margin of appreciation allowed to States under the Convention. Finally, he states that the Government has invoked the derogation in order to win time and thus delay the date of reforming the domestic legislation as required by the judgment of the European Court of Human Rights in the case of Brogan and Others (judgment of 29 November 1988, Series A no. 145-b).

The applicant had originally also invoked Article 5 para. 1 of the Convention. However, he, in effect, withdrew his complaints under this provision in his observations on admissibility and merits.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 February 1989 and registered on 20 February 1989. After a preliminary examination of the case by the Rapporteur, the Commission considered the admissibility of the application on 5 September 1989. It decided to give notice of the application to the respondent Government and to invite the parties to submit their written observations on admissibility and merits, particularly regarding the applicant's challenge to the validity of the derogation under Article 15 of the Convention.

The Government submitted their observations on 16 February 1990 after an extension of the time limit. The applicant replied on 15 May 1990 also after an extension of the time limit. In his observations he, in effect, withdrew his complaints under Article 5 para. 1 of the Convention.

THE LAW

1. The applicant has complained that his arrest and detention in October-November 1988 and January 1989 were in breach of Article 5 paras. 2, 3 and 5 (Art. 5-2, 5-3, 5-5) of the Convention the relevant parts of which provide as follows:

> "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) (Art. 5-1-c) of this Article shall be brought promptly before a judge ...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article (Art. 5) shall have an enforceable right to compensation."

2. The Government submitted that the applicant's complaint under Article 5 para. 2 (Art. 5-2) of the Convention was inadmissible either for non-exhaustion of domestic remedies, or as being unclear and unsubstantiated and, therefore, manifestly ill-founded. The applicant contends that his arrest was under the same conditions as in case of Fox, Campbell and Hartley against the United Kingdom, and the information lacking contrary to Article 5 para. 2 (Art. 5-2) of the Convention.

However, the Commission refers to the judgment of the European Court of Human Rights in the Fox, Campbell and Hartley case in which it held that there was no ground to suppose that during the police questioning of those applicants they were unable to understand why they had been arrested. The reasons why they were suspected of being terrorists were thereby brought to their attention during their interrogation and, accordingly, they had not suffered a breach of Article 5 para. 2 (Art. 5-2) of the Convention (Eur. Court H.R., Fox, Campbell and Hartley judgment of 30 August 1990, Series A no. 182, paras. 40-43).

The Commission finds no reason in the present application to distinguish it from the Fox, Campbell and Hartley case. It also finds no evidence in the case-file to suggest that during the questioning of the applicant he was not made aware of the reasons for his arrest on suspicion of being concerned in the commission, preparation or instigation of specific acts of terrorism. It follows, assuming that the applicant may be said to have complied with Article 26 (Art. 26) of the Convention, that this aspect of the case is manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant's principal complaint was that his detention for 3 days, 12 hours and 24 minutes as of 31 October 1988, and again for 3 days and 14 hours as of 17 January 1989, was in breach of Article 5 para. 3 (Art. 5-3) of the Convention because, in his submission, he was not brought promptly before a judge. The Government contended that, according to the constant case-law of the Commission and Court, no violation of Article 5 para. 3 (Art. 5-3) of the Convention can arise if the arrested person is released promptly before any judicial control of the detention would have been feasible (Eur. Court H.R., Brogan and Others judgment of 29 November 1988, Series A no. 145-B, p. 32 para. 58). The applicant's release within four days on each occasion was sufficiently prompt to satisfy the requirement of Article 5 para. 3 (Art. 5-3) of the Convention. Furthermore, as regards the second period of detention in this case, the Government considered that it was anyway met by their notice of derogation given to the Secretary General of the Council of Europe on 23 December 1988 under Article 15 (Art. 15) of the Convention. Therefore, even if the second period of detention did not conform with the requirements of Article 5 para. 3 (Art. 5-3) of the Convention, this provision was not breached by virtue of that derogation.

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 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, regardless of the United Kingdom's derogation under Article 15 (Art. 15) of the Convention as of 23 December 1988, neither period of detention experienced by the applicant discloses any appearance of a breach of Article 5 para. 3 (Art. 5-3) of the Convention. Accordingly this part of the application is also manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. Finally, the applicant complained that he had no enforceable right to compensation in domestic law for the breaches of Article 5 (Art. 5) of the Convention which he had alleged. The Government submitted, in reply, that as no breach of Article 5 (Art. 5) of the Convention was disclosed in this case, the applicant had no right to compensation.

The Commission refers to its conclusions above that the applicant's complaints under Article 5 paras. 2 and 3 (Art. 5-2, 5-3) of the Convention did not disclose any appearance of a violation of these provisions. In these circumstances the applicant is not entitled to compensation pursuant to Article 5 para. 5 (Art. 5-5) of the Convention. Accordingly this part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)