AS TO THE ADMISSIBILITY OF

Application No. 14550/89
by Sean McELDOWNEY and Kathleen McELDOWNEY
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 13 January 1989 by Sean McELDOWNEY and Kathleen McELDOWNEY against the United Kingdom and registered on 18 January 1989 under file No. 14550/89;

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 first applicant, Sean McEldowney, is a citizen of the United Kingdom, born in 1956 and resident in Swatragh, Derry, Northern Ireland. He is a joiner by profession.

The second applicant, Kathleen McEldowney, is his wife, a citizen of the United Kingdom, born in 1960.

They are 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 24 August 1988 two police officers were injured when at about 07.30 hrs. a 2001b (approximately 100 kg) bomb, which had been concealed in a parked van on the main Maghera to Garvagh road in County Londonderry, Northern Ireland, exploded as the officers drove past in a police car. A subsequent search of the area revealed a command wire leading from the van some 100m to the firing point. The van had been stolen by a group which included a person who had been armed with a hand gun. The description of this person subsequently given to the police by the owners of the van was similar to that of the applicant Kathleen McEldowney.

Acting on the basis of information available to them, a search of the applicants' house was conducted by police under section 15 of

the Northern Ireland (Emergency Provisions) Act 1978 (which was amended by section 7 of, and paragraph 3 of Schedule 1 to, the Northern Ireland (Emergency Provisions) Act 1987) at approximately 12.50 hrs. on 24 August 1988. The house is approximately two miles from the scene of the explosion. During the search a man identified as Peter Bateson was found hiding in the roof-space of the house. He was a leading activist in the Provisional IRA, a proscribed terrorist organisation, who had been recently released from prison after serving a sentence of 20 years' imprisonment for terrorist offences. The search of the house also revealed that the shower had recently been used and men's clothing was found in the clothes dryer. On Mr. Bateson being discovered in the house, a police officer asked Kathleen McEldowney if she knew Peter Bateson. She said that she did not. Sean McEldowney was not present in the house.

At 14.50 hrs. Kathleen McEldowney was arrested under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 and was taken to Castlereagh Police Office. At the time of her arrest she was told that she was being arrested under section 12 of the 1984 Act as she was suspected of being involved in terrorism. Her father was that afternoon informed of her arrest and that she had been taken to Castlereagh Police Office.

Peter Bateson was also arrested under section 12 of the 1984 Act.

At 21.55 hrs. on 24 August, on his return to the house, the applicant Sean McEldowney was arrested under section 12 of the 1984 Act. 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. Sean McEldowney was further informed by the arresting officer at the time of his arrest that there had been an attempt to murder members of the RUC by means of a van bomb at Moneyscarvin Road, Maghera, earlier that day, and that shortly after that incident a convicted terrorist, Peter Bateson, had been discovered in the roof-space of the applicants' home. He was also taken to Castlereagh Police Office. His brother was advised that he was being taken there.

On their arrival at the Police Office both applicants were given a notice to persons in police custody setting out their rights of access to legal advice, to have someone informed of their detention and to be medically examined.

Kathleen McEldowney's detention under section 12 was extended by the Secretary of State for two days, until 14.50 hrs. on 28 August 1988 and subsequently for a further three days until 14.50 hrs. on 31 August. She was released at 13.00 hrs. on 31 August without being charged with any offence. At the outset of the first interview during her detention, which began at 19.50 hrs. on 24 August, she was told that the police were enquiring into the bomb explosion that morning at Maghera and she was asked what Peter Bateson was doing in the roof-space of her house. During her detention she was further questioned about Mr. Bateson's presence in the roof-space of her house, including when he had arrived, by whom he was brought, whether Mr. Bateson had taken a shower and whether he had changed his clothes. She was shown the articles of clothing found in the dryer. She was also asked about the attempted murder of the police officers injured in the bomb explosion on 24 August, whether she was a member of a terrorist organisation, in particular of Cumann na mBan, a proscribed terrorist organisation, or had attended "anti-interrogation lectures" and whether she had allowed her house to be used as a "safe house" for terrorists on other occasions. She made no reply to any such questions and did not comment on the articles of clothing shown to her but sat, looking down or staring at the wall, and showing no emotion. She declined to sign copies of the interview notes of the various interviews conducted with her. The second applicant consulted a solicitor on 26, 28 and 30 August 1988.

Sean McEldowney's detention was extended by the Secretary of State for two days until 21.55 hrs. on 28 August 1988 and subsequently for a further three days until 21.55 hrs. on 31 August 1988. He was released at 18.15 hrs. on 31 August without being charged with an offence. At the outset of his first interview, which began at 11.00 hrs. on 25 August 1988, Sean McEldowney was told that the police were enquiring into the van bomb explosion at Maghera and as to why a known terrorist had been found in the roof space of his house. During his detention he was asked about Peter Bateson's presence in the roof-space, was shown the articles of men's clothing found in the clothes dryer at his home. He was asked whether he provided the Provisional IRA with a safe house. He was also asked about his movements on the evening before and on the day of the explosion, in particular at what time he had left home and whether he had been stopped the previous morning by a police patrol at 8.30 am on his journey to work, whether he was a member of the Provisional IRA or of any other proscribed terrorist organisation, whether he had taken part in the hijacking of the van (he was told that the sweater, trousers and shoes, which had been brought to the police office for the applicant to wear by his solicitor, were like the ones which the police believed had been worn by a person involved in the hijack), and whether he had been involved in the explosion on 24 August. He did not answer any such questions and did not comment on the clothing shown to him but for much of the time sat staring at the wall or table. He declined to sign copies of the interview notes of the various interviews conducted with him.

His clothing was forensically examined and he agreed to provide a sample of blood for forensic examination. With his consent, a mouth swab and hair sample were also taken.

He consulted a solicitor on the afternoon of 26 August 1988 and on 28 and 30 August.

COMPLAINTS

The applicants allege that they were detained in breach of Article 5 para. 3 of the Convention, in that they were not brought promptly before a judge in order to be charged, or released promptly enough without charge. They complain that they had no right to compensation for this alleged breach of Article 5 para. 3, pursuant to Article 5 para. 5 of the Convention.

Kathleen McEldowney also complains that she was the victim of a breach of Article 5 para. 1 (c) of the Convention as her arrest and detention were allegedly not for the purposes of bringing her before a competent legal authority on reasonable suspicion of having committed an offence, but for the purposes of ascertaining more information about Peter Bateson.

The applicants 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, they conceded that in that case the Court had made a finding of no violation in circumstances very similar to their 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 13 January 1989 and registered on 18 January 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 applicants' 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 applicants 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 applicants' representatives submitted their 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 their various observations the applicants withdrew certain original complaints they had made under Article 5 para. 4 and Article 13 of the Convention. Sean McEldowney also withdrew his original complaint under Article 5 para. 1 of the Convention, in particular under Article 5 para. 1 (c). As regards Article 5 para. 2, the applicants conceded that the European Court's finding in the Fox, Campbell and Hartley case was made in circumstances very similar to their own (see above under COMPLAINTS).

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

THE LAW

1. The applicants complain that their arrest and detention under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 from 24 to 31 August 1988 failed to observe the requirement of promptness laid down in Article 5 para. 3 (Art. 5-3) of the Convention, for which failure they 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) 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 submit that the applicants' complaint, as it was originally formulated, does not concern Article 5 para. 3 (Art. 5-3) of the Convention but Article 5 para. 1 (c) (Art. 5-1-c), under which provision their claims were without substance. As the facts of the case disclose no breach of the other provisions of Article 5 (Art. 5), no issue could arise under Article 5 para. 5 (Art. 5-5) of the Convention. The applicants, in reply, rely on the judgment of the Court in the case of Brogan and Others (Eur. Court

H.R., judgment of 29 November 1988, Series A no. 145-B) in support of their claims under Article 5 paras. 3 and 5 (Art. 5-3, 5-5) 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 applicants had not had a right to compensation in respect of the violation of Article 5 para. 3 (Art. 5-3).

The Commission notes that the first applicant was arrested and detained for 6 days 20 hours and 20 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 second applicant was similarly detained for a period of 6 days 22 hours and 10 minutes. The Commission finds, therefore, that the applicants' complaints under Article 5 paras. 3 and 5 (Art. 5-3, 5-5) 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 this aspect of the case inadmissible has been established.

2. The second applicant also contends that her arrest and detention 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). She concedes that there was a reasonable suspicion against her 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 her ensuing detention was not to bring her before a competent legal authority, but to obtain further information about Peter Bateson. She claims that this rendered her detention unlawful for the purposes of the Convention.

The Government rely on the judgment of the Court in the aforementioned 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 second 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 her of a criminal offence at the time of her arrest. She only contests the purpose of the arrest, which allegedly was not in order to bring her 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) 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."
> (Ibid 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 second applicant was not in good faith or that her detention was not intended to further that investigation by way of confirming or dispelling their concrete suspicions about her involvement in a criminal offence, which had grounded her arrest. Had it been possible, the police would presumably have laid charges and the second applicant would have been brought before the competent legal authority. The Commission concludes, therefore, that her 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.

3. After having first complained of a violation of Article 5 para. 2 (Art. 5-2) of the Convention, the applicants 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 their 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 their 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 ADMISSIBLE, without prejudging the merits of the case, the applicants complaints under Article 5 paras. 3 (Art. 5-3) and 5 (Art. 5) of the Convention;

DECLARES INADMISSIBLE the remainder of the application.

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