AS TO THE ADMISSIBILITY OF

Application No. 14705/89
by William McFADDEN
against the United Kingdom

The European Commission of Human Rights sitting in private on 11 October 1993, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI

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 23 February 1989 by William McFADDEN against the United Kingdom and registered on 28 February 1989 under file No. 14705/89 ;

Having regard to:

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

- the Commission's decision of 4 September 1989 to adjourn the case pending the outcome of Applications Nos. 14553/89 and 14554/89, Brannigan and McBride v. the United Kingdom;

- the judgment of the European Court of Human Rights in those applications on 26 May 1993;

- information provided by the applicant's representatives on 4 August 1993;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of the United Kingdom, born in 1959. He is an unemployed fitter and, at the time of lodging his application, resided in Londonderry, Northern Ireland. He is represented in the proceedings before the Commission by Messrs. J. C. Napier and Co., solicitors, now incorporated in the firm of Ms. P. Drinan, solicitor,

Belfast.

The facts of the present case, as submitted by the applicant, may be summarised as follows.

The applicant has previously brought an application to the Commission concerning his arrest and detention under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, which resulted in a judgment of the European Court of Human Rights finding, inter alia, that he was not brought promptly before a court as required by Article 5 para. 3 of the Convention (Eur. Court H.R., Brogan and Others judgment of 29 November 1985, Series A no. 145-B).

The applicant states that while his case was pending he was regularly stopped by the police and questioned for brief periods under Section 12 of the 1984 Act.

He claims that, since the judgment of the Court in his case, he has been in genuine fear of further arrest and detention without any prospect of being brought promptly before a court or other judicial authority. He states that he can be lawfully arrested any time in the future under Section 12, either on the basis of the original suspicion which existed in his previous case, or on some other new suspicion, without having committed any criminal offence in the United Kingdom.

On 23 December 1988 the United Kingdom informed the Secretary General of the Council of Europe that they derogated from the requirements of Article 5 of the Convention in respect of Section 12 of the 1984 Act.

COMPLAINTS

The applicant makes the following complaints:

(1) that the United Kingdom has failed to secure his right to be brought promptly before a court as required by Article 5 para. 3 of the Convention;

(2) that he may again be deprived of his liberty without being brought promptly before a judge;

(3) that if he is arrested and detained he will be prevented from bringing proceedings to determine the lawfulness of his detention in breach of Article 5 para. 4 of the Convention;

(4) that if arrested and detained he will be denied an enforceable right to compensation in breach of Article 5 para. 5 and Article 13 of the Convention;

(5) that he is denied the quiet enjoyment of his liberty and security of person by the existence of the above legislation and the United Kingdom's derogation.

The applicant states that he is a victim within the meaning of Article 25 para. 1 of the Convention notwithstanding the fact that he has not been arrested and detained, since his liberty and security of person are infringed by the failure of the United Kingdom to implement the judgment of the European Court of Human Rights in his first case.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 February 1989 and registered on 28 February 1989. The Commission decided on 4 September 1989 to adjourn its examination of the case pending the outcome of two similar

applications challenging the United Kingdom's derogation of 23 December 1988: Applications Nos. 14553/89 and 14554/89, Brannigan and McBride v. the United Kingdom (Comm. Report 3.12.91), which were subsequently referred to the European Court of Human Rights.

The Court gave its judgment in the Brannigan and McBride cases on 26 May 1993 (to be published in Series A no. 258-B). The applicant was asked whether he wished to maintain his case before the Commission and, if so, to submit comments on how his case could be distinguished from those of Brannigan and McBride. On 4 August 1993 the applicant's representatives replied that the application was maintained for the time being while they tried to find facts which might distinguish their client's case from those of Brannigan and McBride. Nothing further has been heard from the applicant or his representatives.

THE LAW

1. The applicant complains that, following the judgment of the European Court of Human Rights in his case (Eur. Court H.R., Brogan and Others judgment of 29 November 1988, Series A no. 145-B), the United Kingdom has lodged a derogation under Article 15 (Art. 15) of the Convention and has failed to repeal Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984. He claims that, in consequence, he may be arrested and detained at any time in breach of his right to liberty and security of person, guaranteed by Article 5 para. 1 (Art. 5-1) of the Convention. He further complains of a breach of Article 5 paras. 3, 4 and 5 and Article 13 (Art. 5-3, 5-4, 5-5, 13) of the Convention.

The relevant parts of Article 5 (Art. 5) read as follows:

> "1. 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...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 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."

Article 13 (Art. 13) of the Convention guarantees a right to an effective domestic remedy for breaches of Convention rights and freedoms.

2. The Commission recalls that in the applicant's first case the European Court of Human Rights held that the applicant's arrest and detention on a previous occasion under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 had complied with Article 5 para. 1 (Art. 5-1) of the Convention. The Court considered that his arrest and detention had been based on reasonable suspicion of him having committed an offence and had been effected for the purpose of

bringing him before a judge should that suspicion have been confirmed and criminal charges brought (aforementioned Brogan and Others judgment, pp. 28-30, paras. 49-54). The Commission finds no reason to speculate whether any future detention of the applicant under Section 12 of the 1984 Act (now Section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989) would infringe the applicant's rights under Article 5 para. 1 (Art. 5-1) of the Convention. Suffice it to say that there is no appearance, at the present time, of the applicant's rights under that provision having been infringed.

3. The Commission notes that, in respect of detention since December 1988 under Section 12 of the 1984 Act, the European Court of Human Rights has held that the derogation lodged by the United Kingdom satisfies the requirements of Article 15 (Art. 15) of the Convention and that, therefore, an individual detained under Section 12 cannot validly complain of a violation of Article 5 para. 3 (Art. 5-3). The Court considered that it follows from this conclusion that there is no obligation under Article 5 para. 5 (Art. 5-5) of the Convention to provide the detainee with an enforceable right to compensation. The Court also held that such persons have an adequate remedy at their disposal to test the lawfulness of their detention, for the purposes of both Article 5 para. 4 and Article 13 (Art. 5-4, 13) of the Convention, in the form of an application for habeas corpus (Eur. Court H.R., Brannigan and McBride judgment of 26 May 1993, paras. 74 and 76, to be published in Series A no. 258-B).

The Commission finds no elements in the present case which could distinguish it from the aforementioned Brannigan and McBride applications. The Commission concludes, therefore, that, in view of the valid derogation made by the United Kingdom Government on 23 December 1988, the applicant cannot complain of a violation of Article 5 para. 3 (Art. 5-3) of the Convention. Consequently, there was no obligation under Article 5 para. 5 (Art. 5-5) to provide the applicant in this respect with an enforceable right to compensation. Moreover, the applicant had a remedy in the form of a habeas corpus application to secure his rights under either Article 5 para. 4 (Art. 5-4) of the Convention in particular, or Article 13 (Art. 13) in general.

4. It follows that the application discloses no appearance of a violation of either Articles 5 or 13 (Art. 5, 13) of the Convention and that it must 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)