AS TO THE ADMISSIBILITY OF

Application No. 14632/89
by Sean McGOVERN
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 27 January 1989 by Sean McGOVERN against the United Kingdom and registered on 7 February 1989 under file No. 14632/89;

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 applicant, Sean McGovern, is a citizen of the United Kingdom, born in 1958 and resident in Kinawley, County Fermanagh, Northern Ireland. He is 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.

At about 19.07 hrs. on 26 October 1988 Reserve Constable McCrone and a colleague were ambushed shortly after the two officers left Kinawley RUC Station. Reserve Constable McCrone was shot dead and his colleague seriously injured. A vehicle owned by the applicant who is known to associate with members of the Provisional IRA, a proscribed terrorist organisation, was seen by three witnesses in the immediate vicinity of the shooting both before and after the incident.

At 07.00 hrs. on 27 October 1988, whilst his house was being searched under section 15 of the Northern Ireland (Emergency Provisions) Act 1978 and after he had been questioned by police officers about his movements the night before, the applicant was arrested under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984. 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 and, in particular, was suspected of having been involved in the murder of Constable McCrone at Kinawley on 26 October 1988. He was taken to Armagh Police

Office. On his arrival there he was given a copy of the notice to persons in police custody. His detention was extended by the Secretary of State for three days until 07.00 hrs. on 1 November and then for a further two days until 07.00 hrs. on 3 November. He was released without charge at 16.15 hrs. on 2 November.

He saw his solicitor on 29 and 31 October 1988.

At the outset of the first interview, which began at 10.35 hrs. on 27 October 1988, he was told that the police were making enquiries into the murder of a police officer the night before at Kinawley and that they believed his car to have been observed shortly after the shooting. During his detention he was asked about his movements at the time of the ambush, how his car came to be seen in the vicinity of the ambush speeding away, with another car, immediately after the incident, whether he had been forced to allow his car to be used and whether anyone had used his car at the material time, why a CB radio and aerial, which showed signs of having been removed from his car hastily, had been found at his house, and whether he was a member of the Provisional IRA. For most of the time during the interviews he remained silent, sitting with his arms folded or with his head in his hands, sometimes whistling to himself, sometimes looking at the floor, ceiling or walls and sometimes making chuckling noises. At one stage he rubbed and poked his right eye continually for about half an hour until it had reddened (he was asked if he wanted anything for his eye but made no reply). Sometimes he refused to sit down. On other occasions he referred to what he had said to the police before his arrest. On 1 and 2 November he gave the police an account of his movements on the day of the ambush and denied any involvement in the murder. He declined to sign any of the interview notes.

COMPLAINTS

The applicant alleges that he was detained in breach of Article 5 para. 3 of the Convention, in that he was not brought promptly before a judge in order to be charged, or released promptly without charge. He complains that he had no right to compensation for this alleged breach of Article 5 para. 3, pursuant to Article 5 para. 5 of the Convention.

The applicant 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, he conceded that in that case the Court had made a finding of no violation in circumstances very similar to his 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 27 January 1989 and registered on 7 February 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 applicant's 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 applicant 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 applicant's representatives submitted 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 his various observations the applicant withdrew certain original complaints he had made under Article 5 paras. 1 (c) and 4 and Article 13 of the Convention. As regards Article 5 para. 2, the applicant conceded that the European Court's finding in the Fox, Campbell and Hartley case was made in circumstances very similar to his own (see above under COMPLAINTS).

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

THE LAW

1. The applicant complains that his arrest and detention under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 from 14 to 17 September 1988 failed to observe the requirement of promptness laid down in Article 5 para. 3 (Art. 5-3) of the Convention, for which failure he 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, 5-5) 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."
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> "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 contend that the applicant's 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 his claim was 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 applicant, in reply, relies 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 his claims under Article 5 paras. 3 and 5 (Art. 5-3, 5-5) of the Convention, and from which case he submits that his application is indistinguishable.

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) (Eur. Court H.R., judgment of 29 November 1988, Series A no. 145-B, paras. 55-62 and paras. 66-67).

The Commission notes that the applicant was arrested and detained for 6 days 9 hours and 15 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 Commission finds, therefore, that the applicant's 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 the case inadmissible has been established.

2. After having first complained of a violation of Article 5 para. 2 (Art. 5-2) of the Convention, the applicant 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 his 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 his 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 THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Secretary to the
Second Chamber

(K. ROGGE)

President of the
Second Chamber

(S. TRECHSEL)