AS TO THE ADMISSIBILITY OF

Application No. 14633/89
by Mary 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 Mary McGOVERN against the United Kingdom and registered on 7 February 1989 under file No. 14633/89;

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, Mary McGovern, is a citizen of Ireland, born in 1958 and resident in Kinawley, County Fermanagh, Northern Ireland. She 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's husband, Sean McGovern, 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.

On 27 October 1988 the applicant's husband was arrested by the police whilst the couple's house was being searched. He was arrested under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 as he was suspected of being involved in terrorism and, in particular, he was suspected of having been involved in the murder of Constable McCrone. For the same reasons the applicant, who is known to associate with members of the Provisional IRA, was arrested at her place of work at 12.05 hrs. on 1 November 1988. She had travelled in her husband's car to, and returned separately from, the Republic of

Ireland later on the evening of the murder, crossing the border in the course of both journeys at points near to where the ambush had occurred. At the time of her arrest she was told that she was being arrested under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 as she was suspected of being involved in terrorism and, in particular, was suspected of involvement in the murder of Reserve Constable McCrone at Kinawley on 26 October 1988. She was taken to Armagh Police Office. On her arrival there she was given a copy of the notice to persons in police custody. She was released without charge at 16.00 hrs. on 2 November 1988.

While detained she had asked to see a solicitor. Access to the solicitor was delayed for twenty-four hours under section 15 of the Northern Ireland (Emergency Provisions) Act 1987 (by which time she had been released).

At the outset of the first interview with her, which began at 15.05 hrs. on 1 November 1988, she was told that the police were investigating the murder of the policeman on 26 October at Kinawley. During her detention she was asked about her movements at that time and her involvement in the murder. She refused to answer questions on 1 November but, on 2 November, gave an account of her movements. She declined to sign any of the interview notes.

COMPLAINTS

The applicant complains that she was the victim of a breach of Article 5 para. 1 (c) of the Convention as her arrest and detention were 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 about her movements after the terrorist crime in question. She also complains that her detention was in breach of the promptness requirement of Article 5 para. 3 of the Convention and that she had no right to compensation for these alleged breaches of Article 5 paras. 1 (c) and 3, contrary 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, she conceded that in that case the Court had made a finding of no violation in circumstances very similar to her 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 her various observations the applicant withdrew certain original complaints she had made under Article 5 para. 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 her 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 first contends that her arrest and detention under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 was in breach of Article 5 para. 1 (Art. 5-1) of the Convention, in particular Article 5 para. 1 (c) 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 her movements after the terrorist crime in question. 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 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 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."
(Eur. Court H.R., judgment of 29 November 1988, Series A No. 145-B 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 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 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.

2. The applicant next complains that her arrest and detention from 1 to 2 November 1988 failed to observe the requirement of promptness laid down in Article 5 para. 3 (Art. 5-3) of the Convention, for which failure she 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."

"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 her claim is without substance. Moreover, given the fact that she was released after 1 day 3 hours and 55 minutes detention, the requirement to bring her before a judge did not arise. Referring to the aforementioned judgment of the Court in the case of Brogan and Others and the Commission's established case-law cited at para. 57 of that judgment, they submit that the applicant's release in less than two days after her arrest was compatible with the requirements of Article 5 para. 3 (Art. 5-3) of the Convention. As the facts of this case disclose no breach of Article 5 (Art. 5) of the Convention, the provisions of Article 5 para. 5 (Art. 5-5) have no application. In reply the applicant submits that the Government have made no attempt to justify the length of her detention or shown how long it might reasonably have taken to dispel the suspicions they held against her when she was arrested. She considers that the facts of her case are sufficiently distinguishable from that of Brogan and Others to warrant the finding of a breach of Article 5 paras. 3 and 5 (Art. 5-3, 5-5) even after such a short period of detention.

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, or other officer authorised by law to exercise judicial power, 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 the period of detention experienced by the applicant does not disclose any appearance of a breach of Article 5 para. 3 (Art. 5-3) of the Convention. Accordingly this part of the application is manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Regarding the applicant's complaint under Article 5 para. 5 (Art. 5-5) of the Convention that she had no enforceable right to compensation in domestic law for the alleged breach of Article 5 para. 3 (Art. 5-3) of the Convention, as the Commission has concluded that this latter allegation is manifestly ill-founded, the applicant is not entitled to such compensation. Accordingly her complaint under Article 5 para. 5 (Art. 5-5) of the Convention must also be rejected as being 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 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 her 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 her 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 INADMISSIBLE.

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