



An Chartlann Náisiúnta National Archives

Reference Code:	2018/68/24
Creation Dates:	29 November 1988
Extent and medium:	7 pages
Creator(s):	Department of the Taoiseach
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

COUNCIL
OF EUROPE

CONSEIL
DE L'EUROPE

PRESS COMMUNIQUÉ

COMMUNIQUÉ DE PRESSE

EUROPEAN COURT OF HUMAN RIGHTS

HUMAN RIGHTS NEWS

C (88) 141
29.11.1988

Press release issued by the Registrar of the European Court
of Human Rights

JUDGMENT IN THE CASE OF BROGAN AND OTHERS

On 29 November 1988 in Strasbourg, the European Court of Human Rights delivered judgment in the case of Brogan and Others, which concerns the United Kingdom. The Court held by twelve votes to seven that Article 5 § 3 of the European Convention on Human Rights had been violated in respect of all four applicants, as none of them had been brought promptly before a judge or other judicial officer following their arrest on suspicion of involvement in terrorist activities in Northern Ireland. The Court also found by thirteen votes to six that, in breach of Article 5 § 5, the applicants did not have under Northern Ireland law an enforceable right to compensation for the violation of Article 5 § 3. On the other hand, by various votes the applicants' claims of violation of Article 5 §§ 1 and 4 (right to liberty, and right to take court proceedings to test the lawfulness of one's detention) were rejected and the Court found it unnecessary in the circumstances to examine the applicants' complaint under Article 13 (right to a domestic remedy for breach of the Convention).(*)

The judgment was read out at a public hearing by Mr Rolv Ryssdal, the President of the Court.

(*) The text of the Convention Articles referred to in this release is set out in an appendix.

The Council of Europe member states:

Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom

Les Etats membres du Conseil de l'Europe:

Autriche, Belgique, Chypre, Danemark, France, République Fédérale d'Allemagne, Grèce, Islande, Irlande, Italie, Liechtenstein, Luxembourg, Malte, Pays-Bas, Norvège, Portugal, Saint-Marin, Espagne, Suède, Suisse, Turquie, Royaume-Uni

SERVICE DE PRESSE - CONSEIL DE L'EUROPE - B.P. 431 R6 - F-67006 STRASBOURG CEDEX

Tél. 88 61 49 61 - Téléc. 870943 EUR F - Télécopie 88 36 70 57

I.

BACKGROUND TO THE CASE

A. Principal facts

1. The applicants, Mr Terence Brogan, Mr Dermot Coyle, Mr William McFadden and Mr Michael Tracey, are British citizens resident in Northern Ireland.

2. In the autumn of 1984 they were arrested under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 on the basis of a reasonable suspicion that they had been involved in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland. "Terrorism" is defined in the 1984 Act as "the use of violence for political ends", including "the use of violence for the purpose of putting the public or any section of the public in fear". In each case the initial period of 48 hours' detention permitted by the legislation was extended by decision of the Secretary of State for Northern Ireland. The applicants were held for periods of five days and eleven hours, six days and sixteen and a half hours, four days and six hours, and four days and eleven hours respectively. All four were questioned about specific terrorist incidents, but none of them was charged or brought before a judicial authority before his release.

3. The emergency situation in Northern Ireland in the 1970s and the attendant level of terrorist activity formed the background of the introduction in 1974 of the initial legislation granting the special anti-terrorist powers under which the applicants were arrested and detained. Since their introduction the need for the continuation of these special powers has been constantly monitored by the United Kingdom Parliament and their operation regularly reviewed by independent personalities. The authors of these reviews concluded *inter alia* that in view of the problems inherent in the prevention and investigation of terrorism, the continued use of the special powers of arrest and detention was indispensable. The suggestion that decisions extending the detention should be taken by the courts was rejected, amongst other reasons, because the information grounding these decisions was highly sensitive and could not be disclosed to the persons in detention or their legal advisers.

B. Proceedings before the European Commission of Human Rights

The four applications were lodged with the Commission between October 1984 and February 1985. The Commission ordered their joinder on 10 July 1986 and declared them admissible the following day.

In its report of 14 May 1987 (*), the Commission concluded that there had been a breach of paragraphs 3 and 5 of Article 5 in respect of Mr Brogan and Mr Coyle (by 10 votes to 2 for paragraph 3, and 9 votes to 3 for paragraph 5), but not in respect of Mr McFadden and Mr Tracey (by 8 votes to 4 for both paragraphs); that there had been no breach of paragraphs 1 and 4 of Article 5 (unanimously for paragraph 1, and by 10 votes to 2 for paragraph 4); and finally that no separate issue arose under Article 13 (unanimously).

The case was referred to the Court by the Commission on 15 July 1987 and by the United Kingdom Government on 3 August 1987.

(*) The report is available to the press and the public from the Registrar of the Court on request.

II.

SUMMARY OF THE JUDGMENT (*)

A. Scope of the case before the Court

1. The applicants sought to reinstate a complaint under Article 5 § 2 (right to be informed promptly of the reasons for one's arrest) which they had withdrawn at the admissibility stage before the Commission. The Court noted that as a result of the withdrawal the Commission had discontinued its examination of the admissibility of the Article 5 § 2 complaint. This being so, it was held that to permit revival of the complaint before the Court would be to circumvent the machinery established for the examination of petitions under the Convention. Consequently, the allegation of breach of Article 5 § 2 could not be entertained.

(paragraphs 45-47 of the judgment)

B. General approach

2. The Court, having taken notice of the growth of terrorism in modern society, recognised the need, inherent in the Convention system, for a proper balance between the defence of democratic institutions in the common interest and the protection of individual rights. There was no call in the present proceedings to consider whether any derogation from the United Kingdom's obligations under the Convention might be permissible under Article 15 by reason of a terrorist campaign in Northern Ireland. This did not, however, preclude proper account being taken of the background circumstances of the case.

(paragraph 48 of the judgment)

C. Alleged breach of Article 5 § 1

3. The applicants argued that the deprivation of liberty they suffered by virtue of section 12 of the 1984 Act failed to comply with Article 5 § 1(c), since they were not arrested on suspicion of an "offence", nor was the purpose of their arrest to bring them before the competent legal authority.

4. The 1984 Act does not, it is true, require an arrest to be based on suspicion of a specific offence, but on suspicion of involvement in "acts of terrorism". Nevertheless, in the Court's view, the statutory definition of "terrorism" is well in keeping with the Convention's notion of an "offence". In addition, each applicant had been questioned within a few hours of his arrest about his suspected involvement in specific offences.

(*) This summary of the registry does not bind the Court.

5. As to the applicants' second argument, whilst the applicants had been neither charged nor brought before a court, the existence of the requisite purpose had to be considered independently of its achievement. Sufficient evidence to bring charges 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. There was no reason to believe that the applicants' detention was not intended to further the police investigation by way of confirming or dispelling the concrete suspicions which grounded their arrest.

6. Accordingly, the conditions for lawful arrest and detention spelt out in sub-paragraph (c) of Article 5 § 1 were satisfied in the applicants' cases.

(paragraphs 49-54 of the judgment and point 1 of the operative provisions)

D. Alleged breach of Article 5 § 3

7. The applicants submitted that whilst in police custody under the 1984 Act they had been denied their right to be brought promptly before a judge or other judicial officer.

8. By virtue of Article 5 § 3, if the arrested person is not released promptly he is entitled to a prompt appearance before a judicial authority. The Court understood the word "promptly" - read in the light of the equivalent word in the French text ("aussitôt"), which literally means immediately - as allowing only a limited degree of flexibility. Furthermore, "whereas promptness is to be assessed in each case according to its special features ..., the significance to be attached to those features can never be taken to the point of impairing the very essence of the right guaranteed by Article 5 § 3, that is to the point of effectively negating the State's obligation to ensure a prompt release or a prompt appearance before a judicial authority".

9. Turning to the facts, the Court recognised that the investigation of terrorist offences undoubtedly presents the authorities in Northern Ireland with special problems. Account was also taken of the safeguards of ministerial control, the constant monitoring of the need for the legislation by Parliament and the regular review of its operation by independent personalities. The context of terrorism in Northern Ireland was therefore held to have the effect of prolonging the permissible period of police custody prior to appearance before a judge or other judicial officer. In addition, the Court stated, the difficulties of judicial control over decisions to arrest and detain suspected terrorists may call for appropriate procedural precautions.

Nevertheless, in the Court's view, even the shortest of the four periods of detention, namely the four days and six hours spent in police custody by Mr McFadden, fell outside the strict constraints as to time permitted by the the notion of "promptness". To attach such importance to the special features of the case as to justify so lengthy a period of detention without appearance before a judge or other judicial officer would entail consequences impairing the very essence of the right to prompt judicial control protected by Article 5 § 3. The Court thus had to conclude that none of the applicants was either brought "promptly" before a judicial authority or released "promptly" following his arrest. "The undoubted fact that the arrest

and detention of the applicants were inspired by the legitimate aim of protecting the community as a whole from terrorism is not on its own sufficient to ensure compliance with the specific requirements of Article 5 § 3."

(paragraphs 55-62 of the judgment and point 2 of the operative provisions)

E. Alleged breach of Article 5 § 4

10. Article 5 § 4 guaranteed the applicants the right to take court proceedings enabling a review bearing upon the procedural and substantive conditions which were essential for the "lawfulness", in the sense of Article 5 § 1(c) of the Convention, of their deprivation of liberty. The remedy of habeas corpus, although the applicants chose not to avail themselves of it, would have allowed the Northern Ireland courts to examine not only compliance with the procedural requirements set out in the 1984 Act but also the reasonableness of the suspicion grounding the arrest as well as the legitimacy of the purpose pursued by the arrest and the ensuing detention. Consequently, no breach of Article 5 § 4 was found.

(paragraphs 63-65 of the judgment and point 3 of the operative provisions)

F. Alleged breach of Article 5 § 5

11. The Court, rejecting the argument advanced by the Government, considered that the entitlement to compensation granted by Article 5 § 5 was not restricted to a deprivation of liberty which was unlawful under domestic law or arbitrary. The text of Article 5 § 5 spoke of arrest or detention "in contravention of the provisions of this Article". It was undisputed by the Government that the violation of Article 5 § 3 found by the Court could not give rise, either before or after the present judgment, to an enforceable claim for compensation by the victims before the domestic courts. Accordingly, there had also been a breach of Article 5 § 5 in respect of all four applicants.

(paragraphs 66-67 of the judgment and point 4 of the operative provisions)

G. Alleged breach of Article 13

12. In the circumstances, the Court did not deem it necessary to examine the case under Article 13.

(paragraph 68 of the judgment and point 5 of the operative provisions)

H. Application of Article 50

13. The Court considered that the question of just satisfaction in relation to the claim for compensation for prejudice suffered was not yet ready for decision and should therefore be reserved. The applicants had not submitted any claim for reimbursement of costs and expenses.

(paragraphs 69-71 of the judgment and points 6-7 of the operative provisions)

o

o o

The Court gave judgment at a plenary sitting, in accordance with the Rules of Court, and was composed as follows: Mr R. Ryssdal (Norwegian), President, Mr J. Cremona (Maltese), Mr Thór Vilhjálmsson (Icelandic), Mrs D. Bindschedler-Robert (Swiss), Mr F. Gölcüklü (Turkish), Mr F. Matscher (Austrian), Mr J. Pinheiro Farinha (Portuguese), Mr L.-E. Pettiti (French), Mr B. Walsh (Irish), Sir Vincent Evans (British), Mr R. Macdonald (Canadian), Mr C. Russo (Italian), Mr R. Bernhardt (German), Mr A. Spielmann (Luxemburger), Mr J. De Meyer (Belgian), Mr J. A. Carrillo Salcedo (Spanish), Mr N. Valticos (Greek), Mr S. K. Martens (Dutch), Mrs E. Palm (Swedish), Judges, Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar.

Several judges expressed separate opinions which are annexed to the judgment.

°
° °

For further information, reference should be made to the text of the judgment, which is available on request and will be published shortly as volume 145-B of Series A of the Publications of the Court (obtainable from Carl Heymanns Verlag KG, Luxemburger Strasse 449, D-5000 Köln 41).

Subject to the discretion attached to his duties, the Registrar is responsible under the Rules of Court for replying to requests for information concerning the work of the Court, and in particular to requests from the press.

APPENDIX

Text of the Convention Articles referred to in the release

Article 5

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 ...;

...

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) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power

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

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 15

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

...

Article 50

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.