COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF BRENNAN v. THE UNITED KINGDOM

(Application no. 39846/98)

JUDGMENT

STRASBOURG

16 October 2001

FINAL

16/01/2002

In the case of Brennan v. the United Kingdom,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 9 January and 25 September 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39846/98) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Irish national, Mr Thomas John Brennan ("the applicant"), on 27 January 1998.

2. The applicant, who had been granted legal aid, was represented before the Court by Mr A. O'Kane, a lawyer practising in Omagh. The United Kingdom Government ("the Government") were represented by their Agent, Mr C. Whomersley, of the Foreign and Commonwealth Office, London.

3. The applicant complained of the circumstances in which he was questioned by the police after his arrest on terrorist offences, alleging, *inter alia*, that he had been denied the right to consult his solicitor during the initial period in police custody, that he made admissions prior to receiving any legal advice, that he was not permitted to have his solicitor present during police interviews, that he was not permitted to see his solicitor in private and that he was, as a result, deprived of a fair trial due to the reliance on the admissions to convict him. He relied on Article 6 §§ 1 and 3 (c) of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that

would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 9 January 2001, the Chamber declared the application admissible [*Note by the Registry.* The Court's decision is obtainable by the Registry].

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's arrest and detention

8. The applicant was arrested in the early morning of 21 October 1990 under section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989 in Strabane by police officers of the Royal Ulster Constabulary ("the RUC") investigating the murder of a former member of the Ulster Defence Regiment. The applicant was transported to the special holding centre for terrorist investigations at Castlereagh, Belfast.

9. The applicant was interviewed for thirty-five hours on consecutive days by RUC police officers, beginning at 11.01 a.m. on 21 October until 25 October.

10. At the time when the applicant was arrested (1.50 a.m. on 21 October), there was an initial decision made to defer the applicant's access to a solicitor by Superintendent M., the police officer in charge of the investigation. He communicated this decision to Castlereagh police station by telephone and confirmed this in writing when he arrived in Castlereagh. The applicant had by this time arrived in Castlereagh and had requested a solicitor. At a review at 9.15 p.m. on 21 October 1990, the applicant was informed that his right to see a solicitor had been delayed for twenty-four hours. The deferral was therefore effective until the morning of 22 October. His solicitor, Mr Fahy, was informed of the deferral but did not attend until 12.10 p.m. on 23 October. There was a period of time from early morning on 22 October when the applicant was not being denied access to his solicitor. He made relevant admissions that afternoon.

11. The applicant did not see his solicitor until the next day, namely 23 October. The applicant's first interview with his solicitor lasted forty minutes until 12.50 p.m. and the applicant made no complaint of ill-

treatment during that visit. The applicant saw his solicitor again at 3.15 p.m. on 25 October and again no complaint of ill-treatment was made in that interview, which lasted until 4.00 p.m. During the first interview with his solicitor, a policeman was present. The consultation took place within sight and hearing of the police officer who was in close proximity to the applicant and his solicitor. At the beginning of the interview, the police inspector told the solicitor in the presence of the applicant that no names were to be discussed or information conveyed which could assist other suspects and that the interview should be purely on legal advice.

12. The applicant was seen by doctors on a total of eight occasions during his stay in Castlereagh, beginning with an examination following his arrival in Castlereagh in the early morning of 21 October 1990. He made no complaint of ill-treatment to any of the doctors who examined him. The doctors found no evidence to indicate any ill-treatment or mental handicap.

13. The police alleged that the applicant admitted his involvement in the murder during an interview in the afternoon of 22 October. They further stated that in a later interview the applicant signed a statement to this effect and that thereafter he freely and voluntarily admitted additional terrorist activity and signed further statements.

14. The applicant alleged that he had not volunteered the statements freely but, instead, that all the verbal and written statements had been extracted by ill-treatment, threats of ill-treatment, threats to his family and other oppressive conduct. The allegations of ill-treatment were denied by the RUC.

15. All of the verbal and written statements made by the applicant had been obtained by the police officers after the administration by them of cautions pursuant to Article 3 of the Criminal Evidence (Northern Ireland) Order 1988, in the following terms:

> "You do not have to say anything unless you wish to do so but I must warn you that if you fail to mention any fact which you rely on in your defence in court, your failure to take this opportunity to mention it may be treated in court as supporting any relevant evidence against you. If you do wish to say anything, what you say may be given in evidence."

16. The applicant's solicitor was never permitted to be present at any of the applicant's interviews, nor was any independent person; nor were the interviews recorded on video or audiotape.

17. On 25 October 1990, at 7.30 p.m., the applicant was transferred from Castlereagh to Strandtown RUC station, where he was charged.

B. The trial proceedings

18. On 14 October 1993 the applicant was tried by a single judge, McCollum J, sitting without a jury, for a total of eighteen serious offences including, *inter alia*, murder, attempted murder, possession of firearms and

ammunition with intent, possession of explosives with intent, false imprisonment, hijacking a motor vehicle, and membership of a proscribed organisation, namely the Provisional Irish Republican Army (the "IRA"). He was found guilty on all counts.

19. The disputed verbal and written statements by the applicant constituted the only evidence connecting the applicant to the charges brought. The admissibility of the statements was challenged by the applicant on the basis that they had been obtained by torture and inhuman or degrading treatment or, alternatively, should be excluded in exercise of the judge's discretion. A *voir dire* (submission on a point of law in the absence of the jury) commenced and the applicant gave evidence over ten days which consisted of a highly detailed account of ill-treatment which he alleged he had experienced from the police. The officers denied ill-treating the applicant.

20. The events in the interviews had been filmed by television camera and the pictures relayed to a monitor screen in a special room at Castlereagh police station. At all times, an officer of the rank of inspector was on duty for the purpose of viewing the monitor screens. A number of officers gave evidence and all of them told the court that they had seen no evidence of impropriety of any kind occurring during the interviews with the applicant. Indeed, none of them had ever witnessed an example of bad behaviour by an interviewing officer.

21. The doctors, who examined the applicant a number of times in Castlereagh, gave evidence that the applicant had been cooperative and composed, that there were no signs of recent injuries and that the applicant did not complain of ill-treatment. Treatment had been given to the applicant in respect of his history of duodenal ulceration.

22. The applicant's account of the interrogation was rejected by the trial judge, who said:

> "Having heard the officers concerned who impressed me as being honest and conscientious officers, I am absolutely convinced that all of [the applicant's] allegations of ill-treatment at this stage are completely unfounded ...
>
> In my view if there had been any truth in the account of ill-treatment given by [the applicant] his distress would have been obvious to the doctors ... None of the medical evidence therefore gave any credence to the account given by [the applicant] in the witness box and all of that evidence is consistent with his being treated with absolute propriety ...
>
> ... I am satisfied ... that in no respect was [the applicant] subjected to any treatment which could be described as torture or inhuman or degrading treatment, violence or oppression in order to induce a confession from him. I am satisfied that he was not threatened in any way."

23. At the trial, there was unchallenged independent medical evidence to the effect that:

1. The applicant had a full-scale intelligence quotient of 72.
2. The applicant was on the borderline of mental retardation.
3. The applicant had a reading ability equivalent to that of an average 10-year-old child.
4. His suggestibility was average but he had a high level of compliance.

24. Evidence was given later in the trial by a psychologist that

> “[the applicant] is a psychologically vulnerable man and in my view would have required appropriate support in the context of police interviews. [The applicant’s] psychological vulnerabilities taken together with the lack of support from either the Solicitor or an appropriate adult during the police interviews and the prolonged and intensive nature of the interviews would in my opinion be of relevance to the reliability of his admissions”.

25. In convicting the applicant, the judge rejected this evidence, finding that the applicant had not needed any form of independent support during the interviews and the police had been entitled to treat him as an ordinary member of society. He noted that the applicant’s earliest admissions did not follow particularly prolonged or intensive questioning and that during those interviews he persisted with a consistent story told with an air of conviction. He also noted that no one thought to have the applicant’s mental capacity investigated prior to the commencement of the trial. The trial judge stated:

> “... I am satisfied that [the applicant] was not suffering from such a degree of mental handicap that would have required the police to exercise any special consideration for him and that his memory, understanding and intellect were quite adequate to enable him to resist making any false confession under questioning in Castlereagh and that the questioning was, therefore, not in any respect unfair to him.
>
> If he was an easier subject than others or more manageable I do not consider that that would be a matter which throws any doubt on the admissibility of any statements of confessions made by him”.

26. The police questioning which led to his confessions was therefore not unfair and the judge had no doubt about the reliability of the admissions made by the applicant.

27. In relation to the question of access to a solicitor, the judge observed that the deferral of twenty-four hours was effective until the morning of 22 October 1990. However, the applicant’s solicitor did not arrive until 12.10 p.m. on 23 October. The trial judge noted that there had been a suggestion that the solicitor may have been unintentionally misled as to the length of time of the deferral but found, having heard the solicitor and police officers concerned, that he was satisfied that the solicitor was accurately informed that the deferral was for twenty-four hours. He further noted that it might well have been convenient for the solicitor to delay his visit to Castlereagh until the next day because a number of other prisoners had had access deferred until then. In any event, it was not the deferral which prevented the applicant from seeing his solicitor after sometime early in the morning of 22 October but the fact that his solicitor did not arrive

until 23 October. Incriminating admissions were made by the applicant at a time when he was no longer being denied access to a solicitor. The judge concluded that there was nothing improper in the decision to deny access for twenty-four hours, having regard to the police fears that messages might be passed through the solicitor with a view to alerting others implicated in offences.

28. The trial judge stated, *inter alia*:

> "Having considered the extent of the strength of character of the accused, his intellectual shortcomings and his nature I am quite satisfied that he was not a person for whom the regime of questioning in Castlereagh would of itself be oppressive ...
>
> I am further satisfied that nothing was said or done during his questioning the effect of which upon him would justify the exercise of a discretion to exclude the statement ...
>
> I am satisfied that ... his admissions were made freely, and accept the police evidence that what triggered the making of admissions by this accused was the fact that the police were able to demonstrate to him that they had information available to them which discredited the alibi that he had given them ...
>
> In my view the particular circumstances of this case provided ample grounds for the belief that other persons could be alerted if a solicitor had seen this accused within 24 hours. In any case [the applicant] made no admission during the 24 hours for which the solicitor had been deferred.
>
> I am satisfied that the deferral was right and proper in this case and that in any case it was not the deferral that resulted in the accused not seeing his solicitor during the early part of 22 October."

29. The judge further considered the applicant's complaints that a police officer had been present during the first legal consultation with his solicitor and whether this had prevented him getting the full benefit of his solicitor's advice. Evidence had been heard from the police inspector concerned who had stated that the purpose of sitting in to observe the interview was primarily to prevent information from being passed from the prisoner to the solicitor which might assist others suspected of involvement in the offence who had not yet been arrested. Under cross-examination, he stated that he had not been told of any codes that might be used and that it would be hard to identify such a code if it was used. The judge found, on the evidence of the applicant, his solicitor and the police officer, that the solicitor had not been in the least inhibited by the presence of the police officers and, according to the applicant, had been quite prepared to raise the crucial evidential issues with him. He was satisfied that an objective state of affairs existed justifying both the initial deferral of access and the supervision of the interview, namely, two other suspects were still at large whom the police wished to interview.

30. The judge concluded that he was satisfied beyond reasonable doubt that the confessions were made freely and voluntarily. There was no ground

for exercising his discretion to exclude any of the oral or written statements made by the applicant. The judge was accordingly satisfied that the applicant knew that he was playing a part in a murder plot and was therefore, *inter alia*, guilty of murder.

C. The appeal proceedings

31. The applicant appealed against conviction and sentence to the Court of Appeal of Northern Ireland. The Court of Appeal noted that the inspector had authorised the postponement of access to a solicitor before the applicant had made a request for a solicitor, which was in technical breach of the statutory provision. The Court of Appeal noted that there was no express sanction for breach of that provision. However, there was nothing unfair to the applicant as the deferral ran from the time of the arrest whenever the authorisation was given. The Court of Appeal was satisfied that substantial reasons existed for the police to postpone access to a solicitor in this particular case pursuant to section 45(8)(b) and (e) of the Northern Ireland (Emergency Provisions) Act 1991. In a judgment of 24 September 1996, the court dismissed the applicant's appeal stating, *inter alia*:

> "We have no doubt that the learned trial judge was at all times aware of the need to bear the psychological evidence very much in mind when forming his conclusions both at the direction stage and when finally deciding if the Crown had established [the applicant's] guilt beyond reasonable doubt ...
>
> We are entirely satisfied that the learned trial judge was entitled to refuse the application for a direction [regarding inadmissibility] and to rule the various statements to be admissible ... Equally our perusal of the evidence does not suggest that the learned judge should, in the exercise of his discretion have excluded the statements, or any of them, from evidence ...
>
> This is an appeal in which the evidence was lengthy and detailed. We have carefully considered all the evidence and [the applicant's counsel's] closely reasoned submission. We have finally stood back from all the detail and looked at the case 'in the round' as [the applicant's counsel] invited us to do. We are satisfied that [the applicant's] guilt was fully established by his admission and that his convictions are neither unsafe nor unsatisfactory."

32. On 28 July 1997 the applicant's petition seeking leave to appeal to the House of Lords was dismissed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Evidence

33. Section 5 of the Northern Ireland (Emergency Provisions) Act 1987 provides in its relevant parts:

> "(1) In any criminal proceedings for a scheduled offence, ... a statement made by the accused may be given in evidence by the prosecution in so far as:
>
> (a) It is relevant to any matter in issue in the proceedings and
>
> (b) It is not excluded by the court in pursuance of subsection (2) below or in the exercise of discretion referred to in subsection (3) below ...
>
> (2) Where in any such proceedings:
>
> (a) the prosecution proposes to give, or has given ... in evidence a statement made by the accused, and
>
> (b) prima facie evidence is adduced that the accused was subjected to torture, inhuman or degrading treatment, or to any violence or threat of violence ... in order to induce him to make the statement
>
> then, unless the prosecution satisfies the court that the statement was not obtained by so subjecting the accused, ... the court shall do one of the following things, namely:
>
> (i) ... exclude the statement;
>
> (ii) ... continue the trial disregarding the statement; or
>
> (iii) in either case direct that the trial shall be restarted before a differently constituted court (before which the statement in question shall be inadmissible).
>
> (3) ... in the case of any statement made by the accused and not obtained by subjecting him as mentioned in subsection (2)(b) above, the court ... has a discretion to do one of the things mentioned in subsection (2)(i) to (iii) above if it appears to the court that it is appropriate to do so in order to avoid unfairness to the accused or otherwise in the interests of justice ..."

34. The Criminal Evidence (Northern Ireland) Order 1988 includes the following provisions:

Article 2(4) and (7)

> "(4) A person shall not be committed for trial, have a case to answer or be convicted of an offence solely on an inference drawn from such a failure or refusal as is mentioned in Article 3 (2), 4 (4), 5 (2) or 6 (2)

...

(7) Nothing in this Order prejudices any power of a court, in any proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion."

Article 3

"Circumstances in which inferences may be drawn from the accused's failure to mention particular facts when questioned, charged, ...

(1) Where, in any proceedings against a person for an offence, evidence is given that the accused

(a) at any time before he was charged with the offence, on being questioned by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or

(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, paragraph (2) applies.

(2) Where this paragraph applies

(a) the court, in determining whether to commit the accused for trial or whether there is a case to answer,

...

(c) the court or jury, in determining whether the accused is guilty of the offence charged,

may

(i) draw such inferences from the failure as appear proper;

(ii) on the basis of such inferences treat the failure as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

(3) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention ..."

B. Provisions governing access to a solicitor

35. Section 45 of the Northern Ireland (Emergency Provisions) Act 1991 (formerly section 15 of the 1987 Act) deals with the right of access to legal advice and provides in its relevant parts:

> "(1) A person who is detained under the terrorism provisions and is being held in police custody shall be entitled, if he so requests, to consult a solicitor privately.
>
> (2) A person shall be informed of the right conferred on him by subsection (1) as soon as practicable after he has become a person to whom the subsection applies.
>
> (3) A request made by a person under subsection (1), and the time at which it is made, shall be recorded in writing unless it is made by him while at a court and being charged with an offence.
>
> (4) If a person makes such a request, he must be permitted to consult a solicitor as soon as practicable except to the extent that any delay is permitted by this section ...
>
> ...
>
> (8) An officer may only authorise a delay in complying with a request under subsection (1) where he has reasonable grounds for believing that the exercise of the right conferred by that subsection at the time when the detained person desires to exercise it –
>
> ...
>
> (b) will lead to the alerting of any person suspected of having committed such an offence but not yet arrested for it; or
>
> ...
>
> (d) will lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or
>
> (e) by alerting any person, will make it more difficult -
>
> i. to prevent an act of terrorism, or
>
> ii. to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism ..."

36. The delay must be authorised by a police officer of at least the rank of superintendent and the detained person must be told the reason for the delay. The maximum delay is forty-eight hours. The officer may also give a direction that a person may only exercise his right to see a solicitor in the presence of a uniformed police officer, where he has reasonable grounds for believing that otherwise the consequences specified in section 45(8) might arise (see section 45(11)).

37. It was the practice of the police in Northern Ireland at the relevant time to refuse to permit the questioning of interviewees at Castlereagh holding centre to be:

1. witnessed by the interviewee's lawyer;
2. independently witnessed and verified by any independent person; or
3. to be recorded and verified by video- or audio-recording.

III. RELEVANT INTERNATIONAL MATERIALS

A. American Convention on Human Rights

38. The relevant parts of Article 8 provide:

> "2. Every person accused of a criminal offence ... is entitled, with full equality, to the following minimum guarantees:
>
> ...
>
> (d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel."

B. Council of Europe Standard Minimum Rules for the Treatment of Prisoners

39. Article 93 provides:

> "An untried prisoner shall be entitled, as soon as he is imprisoned, to choose his legal representative, or shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him, and to receive, confidential instructions. At his request he shall be given all necessary facilities for this purpose. In particular, he shall be given the free assistance of an interpreter for all essential contacts with the administration and for his defence. Interviews between the prisoner and his legal adviser may be within sight but not within hearing, either direct or indirect, of a police or institution official."

C. European Agreement Relating to Persons Participating in Proceedings of the European Court of Human Rights

40. Article 3 § 2 (c) of this Agreement, currently ratified by twenty-two Contracting States provides in its relevant parts:

> "2. As regards persons under detention, the exercise of this right shall in particular imply that:
>
> ...

> (c) such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Court, or any proceedings resulting therefrom."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

41. The applicant complained of the restrictions placed on his consultations with his solicitor after his arrest by the police, the conditions under which he was interviewed by the police and also that the use of the admissions made under those conditions deprived him of a fair trial. He relied on Article 6 §§ 1 and 3 (c) of the Convention, which provide:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

A. Deferral of access to the applicant's solicitor

1. The parties' submissions

42. The applicant submitted that he was a person of very limited intelligence and of a compliant personality. He had been questioned by the police over a lengthy period in custody which *per se* was coercive in nature. He was repeatedly cautioned under Article 3 of the Criminal Evidence (Northern Ireland) Order 1988 ("the 1988 Order"), which called for a considered and carefully advised legal assessment of his position with regard to his right against self-incrimination. However, the applicant did not receive legal advice before he began to confess and indeed was illegally denied access to his solicitor for twenty-four hours. He argued that this was in violation of the guarantees of Article 6 §§ 1 and 3 (c) of the Convention.

43. As regards the denial of access to a solicitor, the Government submitted that the applicant was well capable, despite his low intelligence,

of understanding the caution and not making inaccurate confessions. For example, he only confessed to certain matters and maintained his denials in respect of others. In any event, the deferral was not the reason for the lack of access as it had ended by the time that the confessions were made. Both the trial judge and the Court of Appeal found that there were valid grounds under section 45 of the Northern Ireland (Emergency Provisions) Act 1991 ("the 1991 Act") to defer access to his solicitor.

2. The Court's assessment

44. The Court recalls that the applicant was arrested at 1.50 a.m. on 21 October 1990. A decision was taken at this time to defer his access to his solicitor for twenty-four hours, although it was not until 9.15 p.m. that the applicant was informed of this deferral. The applicant's solicitor was informed that there had been a 24-hour deferral of access. The deferral of access period, which ran from the time of arrest, expired on the morning of 22 October 1990. From that moment, the Court observes that he was no longer being prevented from seeing his solicitor, who did not, however, arrive to see the applicant until 12.10 p.m. on 23 October 1990. The applicant therefore did not obtain a consultation with his solicitor concerning the serious offences of which he was suspected until over forty-eight hours after his arrest.

45. The Court recalls in this connection that, even if the primary purpose of Article 6, as far as criminal matters are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 – may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36). The manner in which Article 6 §§ 1 and 3 (c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case. In its judgment in *John Murray v. the United Kingdom* (8 February 1996, *Reports of Judgments and Decisions* 1996-I, pp. 54-55, § 63), the Court also observed that, although Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation, this right, which is not explicitly set out in the Convention, may be subject to restriction for good cause. The question in each case is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing.

46. The Court has therefore examined whether the measures taken by the police concerning the applicant's access to his solicitor were compatible with the rights of the defence. It notes first of all that the deferral was in fact for a 24-hour period. As appears from the Court of Appeal judgment, there

was a technical breach of section 45 of the 1991 Act as the decision to defer was premature – it should not have been taken until the applicant made a request to see a solicitor. However, it was found that the deferral was made in good faith and on reasonable grounds, namely, that there was a risk of alerting persons suspected of involvement in the offence as yet not arrested, or of making it more difficult to secure the apprehension of such a person or persons.

47. It is also apparent that after the 24-hour period in question the applicant was no longer being denied access to his solicitor. The fact that the solicitor did not arrive to see his client until a day later is not attributable to any measure imposed by the authorities. While the applicant's solicitor sought to suggest that he had been led to believe that the deferral period was forty-eight hours rather than twenty-four hours, the trial judge rejected this during the trial and found that the solicitor had been correctly informed by the police of the 24-hour deferral.

48. Furthermore, while the applicant was interviewed by the police during the 24-hour deferral period, he made no incriminating admissions. The first admissions made by him occurred during interview on the afternoon of 22 October 1990 when he was no longer being denied access to a solicitor. Nor is it the case that any inferences were drawn from any statements or omissions made by the applicant during the first 24-hour period as was the case in *John Murray* (cited above; see also *Averill v. the United Kingdom*, no. 36408/97, § 58, ECHR 2000-VI). The essence of the applicant's complaints is not that he was denied access to legal advice to enable him to choose between silence and participation in police questioning, but rather that he made incriminating statements after the deferral period ended and before the arrival of his solicitor (see *O'Kane v. the United Kingdom* (dec.), no. 30550/96, 6 July 1999, unreported, and *Harper v. the United Kingdom* (dec.), no. 33222/96, 14 September 1999, unreported). The Court is not persuaded therefore that the denial of access during this initial period can be regarded in the circumstances as infringing the applicant's rights under Article 6 §§ 1 or 3 (c) of the Convention. It accordingly finds no violation of these provisions in this regard.

B. The police interviews

1. The parties' submissions

49. The applicant complained that during his interviews with the police in Castlereagh he was not permitted to have his solicitor present and there was no videotaping or audio-recording of the interviews, which was now the practice on mainland United Kingdom. He considered that this contributed to the oppressiveness of the interrogation process from which the guarantees of accountability were lacking. His inability to have a

solicitor present at the police interviews is in striking contrast with the power of the police to insist on having an officer present at his legal consultations. He emphasised that he was a pliable young man of compliant personality, possessed of limited intelligence, held in the psychologically draining conditions of Castlereagh and subject to intensive interrogations. He made highly damaging admissions as a result of this situation and the use of the confessions obtained under these circumstances violated his right to a fair trial. He argued that his case was similar to that in *Magee v. the United Kingdom* (no. 28135/95, ECHR 2000-VI) where Article 6 § 1 had been found to be violated as the applicant had been held for forty-eight hours without access to a solicitor in the intimidating atmosphere of Castlereagh and made damaging admissions later relied on at his trial. His case was, on the other hand, to be distinguished from that in *O'Kane* (cited above) where no breach of Article 6 § 1 was found, as the applicant in that case had not asked for access to legal advice and had not been prevented from obtaining it.

50. The Government submitted that there was no reason to conclude that the confessions made by the applicant during his interviews were made as a result of any inherent compulsion in the caution under Article 3 of the 1988 Order, or as a result of any other coercion. He continued to admit his involvement in offences after seeing his solicitor. The Court of Appeal specifically found that the admissions were made freely. The confessions also occurred after the deferral of access to his solicitor had ended. There were safeguards in place to test the fairness of the confession statements, *inter alia*, the applicant was represented by senior counsel and a solicitor, the circumstances in which the confessions were made were subjected to strict scrutiny at the *voir dire*, and both the trial judge and the Court of Appeal, after considering the reliability of the confessions in detail, found that the applicant's understanding and intellect were quite sufficient to avoid his making a false confession under questioning, that it would be fair to admit them in evidence and that the allegations of ill-treatment were a lie. This application was therefore, in their view, similar to that in *O'Kane* (cited above), which was declared inadmissible by the Court.

2. *The Court's assessment*

51. The Court recalls that the rules on admissibility and the assessment of evidence are principally matters for domestic courts to determine. It is not, as a general rule, for the Court to substitute its own assessment of the evidence made by a domestic court, save in circumstances where the domestic court's assessment was arbitrary or capricious, or the system of guarantees or safeguards which applied in the assessment of the reliability of confession evidence was manifestly inadequate (see *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, § 34). The Court has therefore had regard to the safeguards which

were in place in the present case to test the fairness of admitting the confession statements taken from the applicant.

52. It is to be noted that in the instant case the circumstances in which the confession evidence was obtained were subjected to strict scrutiny at the *voir dire*. The applicant was represented both at his trial and on appeal by experienced counsel. The trial judge heard the applicant in person as well as the police officers who had questioned him at Castlereagh police station. The trial judge, whose findings were upheld by the Court of Appeal following extensive review of the evidence presented in the course of the *voir dire*, was satisfied as to its reliability and the fairness of admitting the evidence. The Court also notes that the applicant does not complain that the decision of either court was in any way arbitrary, or that there was inadequate inquiry into the circumstances in which the confession evidence was obtained such that neither court could have reached a properly informed assessment as to its reliability or fairness.

53. The applicant argued that in the absence of independent evidence of video or taped records of the police interviews, and the absence of the accused's solicitor, there were considerable difficulties for an accused to convince a court, against the testimony of the police officers, that any oppression took place. The Court agrees that the recording of interviews provides a safeguard against police misconduct, as does the attendance of the suspect's lawyer. However, it is not persuaded that these are an indispensable precondition of fairness within the meaning of Article 6 § 1 of the Convention. The essential issue in each application brought before this Court remains whether, in the circumstances of the individual case, the applicant received a fair trial. The Court considers that the adversarial procedure conducted before the trial court, at which evidence was heard from the applicant, psychological experts, the various police officers involved in the interrogations and the police doctors who examined him during his detention, was capable of bringing to light any oppressive conduct by the police. In the circumstances, the lack of additional safeguards has not been shown to render the applicant's trial unfair.

54. As regards the applicant's reliance on *Magee* (cited above), the Court observes that this case concerned a more extreme situation where the applicant was kept incommunicado by the police for a 48-hour period and his admissions were all made before he was allowed to see his solicitor. In the present case, the applicant's access to his solicitor was deferred for twenty-four hours and his admissions were made during the subsequent period when he was not being denied legal consultation. The applicant's complaint that his legal consultations were prejudiced by the presence of a police officer is examined separately below.

55. The Court concludes that there has been no violation of Article 6 § 1 of the Convention and/or Article 6 § 3 (c) as regards the police interviews.

C. Presence of a police officer during the applicant's consultation with his solicitor

1. The parties' submissions

56. The applicant submitted that his right under Article 6 § 3 (c) to be assisted by a lawyer was violated by the presence of a police officer attending within sight and hearing of the consultation. This destroyed the confidentiality of lawyer/client communication and was extremely prohibitive of the necessary frankness with which a client must be permitted to express himself if he is to be properly, usefully and meaningfully advised and assisted by his lawyer. This was particularly the case where the applicant was of pliable personality and low intelligence, subject to restrictions on access to legal advice and coercive interrogation sessions. He denied that there was any justification for the presence of the police officer, since there was no imputation against the solicitor concerned as being likely to pass on messages and the risk of any sophisticated coded message being passed on unwittingly to the solicitor was unsubstantiated in the circumstances. That there was an effect on the interview was shown, for example, by the fact that the inspector at the beginning of the legal consultation stated that no names were to be discussed or information that could be of use to others.

57. The Government submitted that the applicant had not shown that he had suffered any form of actual prejudice or unfairness as a result of the presence of the police officer at the first consultation. They considered that Article 6 § 3 (c) did not guarantee any right to private consultations and that, to the extent such a right could be implied, it could be subject to restrictions for good reason as long as such restrictions pursued a legitimate aim and were proportionate. Furthermore, legal assistance could still be given effectively with third persons present. In this case, the police inspector, who was unconnected with the case, was only present at the first interview and the applicant was able to consult his solicitor privately at any time up to and including his trial. There was also good reason for the presence of the police inspector, namely, the risk of prejudice to the ongoing search for two other suspected persons. The applicant has not pointed to any matters on which he was unable to request or obtain legal advice, or that led him to act in any way differently, or that any use was made by the police of any confidential or privileged material.

2. The Court's assessment

58. The Court has noted above (see paragraph 45) that Article 6 § 3 normally requires that an accused be allowed to benefit from the assistance of a lawyer at the initial stages of an interrogation. Furthermore, an accused's right to communicate with his advocate out of hearing of a third

person is part of the basic requirements of a fair trial and follows from Article 6 § 3 (c). If a lawyer were unable to confer with his client and receive confidential instructions from him without surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective (see *S. v. Switzerland*, judgment of 28 November 1991, Series A no. 220, p. 16, § 48). The importance to be attached to the confidentiality of such consultations, in particular that they should be conducted out of hearing of third persons, is illustrated by the international provisions cited above (see paragraphs 38-40). However, the Court's case-law indicates that the right of access to a solicitor may be subject to restrictions for good cause and the question in each case is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing. While it is not necessary for the applicant to prove, assuming such were possible, that the restriction had a prejudicial effect on the course of the trial, the applicant must be able to be claim to have been directly affected by the restriction in the exercise of the rights of the defence.

59. In this case, the trial judge found that the restriction served the purpose identified under section 45 of the 1991 Act (see paragraph 35 above) of preventing information being passed on to suspects still at large. There was, however, no allegation that the solicitor was in fact likely to collaborate in such an attempt, and it was unclear to what extent a police officer would be able to spot a coded message if one was in fact passed. At most, it appears that the presence of the police officer would have had some effect in inhibiting any improper communication of information, assuming there was any risk that such might take place. While the Court finds that there is no reason to doubt the good faith of the police in imposing and implementing this measure – there is no suggestion, as pointed out by the Government, that the police sought to use the opportunity to obtain evidence for their own purposes –, it nonetheless finds no compelling reason arising in this case for the imposition of the restriction.

60. As regards the proportionality of the restriction, the Court notes that the police officer was only present at one interview. Indeed, the measure could only apply during the first 48-hour period after the arrest, after which the applicant was able to consult out of hearing with his solicitor until his trial some months later. It was a restriction therefore of very limited duration, and may in that respect be distinguished from the breach found in *S. v. Switzerland* (cited above), where the restriction on consultations lasted for about eight months.

61. The consultation was, however, the first occasion since his arrest at which the applicant was able to seek advice from his lawyer. He had been cautioned under Article 3 of the 1988 Order (see paragraph 34 above) and, as noted in *John Murray* (cited above, p. 55, § 66), his decision as to whether to answer particular questions or to risk inferences being drawn

against him later was potentially of great importance to his defence at trial. The Government have argued that the solicitor would have been able to advise him concerning the application of Article 3, even in the presence of the police officer. It also appears that the trial judge, after hearing the solicitor and applicant give evidence concerning the interview, considered that the solicitor had not been inhibited in any way in giving advice to the applicant.

62. Nonetheless, the Court cannot but conclude that the presence of the police officer would have inevitably prevented the applicant from speaking frankly to his solicitor and given him reason to hesitate before broaching questions of potential significance to the case against him. Both the applicant and the solicitor had been warned that no names should be mentioned and that the interview would be stopped if anything was said which was perceived as hindering the investigation. It is immaterial that it is not shown that there were particular matters which the applicant and his solicitor were thereby stopped from discussing. The ability of an accused to communicate freely with his defence lawyer, recognised, *inter alia*, in Article 93 of the Standard Minimum Rules for the Treatment of Prisoners, was subject to express limitation. The applicant had already made admissions before the consultation, and made admissions afterwards. It is indisputable that he was in need of legal advice at that time, and that his responses in subsequent interviews, which were to be carried out in the absence of his solicitor, would continue to be of potential relevance to his trial and could irretrievably prejudice his defence.

63. The Court finds therefore that the presence of the police officer within hearing during the applicant's first consultation with his solicitor infringed his right to an effective exercise of his defence rights and that there has been, in that respect, a violation of Article 6 § 3 (c) of the Convention taken in conjunction with Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

65. The applicant claimed that he had suffered severe and continuing pecuniary damage, suffering and distress as a consequence of breaches of Article 6 §§ 1 and 3 (c) of the Convention. Through those breaches the

authorities had obtained the admissions which were the sole basis for his conviction and detention for a period of almost eight and a half years. He lost his employment during that period, for which he claimed a pecuniary loss of 240 pounds sterling (GBP) per week. His imprisonment also inflicted great stress and suffering on him, contributing to the break-up of his marriage and the loss of contact with his daughter, as well as denying him contact with his wider family and friends.

66. The Government submitted that there was no evidence that the result of the applicant's trial would have been any different if there had been no breach of the Convention. His admissions, some of which were made after seeing his solicitor, were found to be freely made at trial and by the Court of Appeal. A finding of a violation would in the circumstances constitute ample "just satisfaction".

67. The Court recalls that it has only found a breach of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 as regards one aspect of the applicant's complaints, namely, the presence of a police officer during his first consultation with his solicitor after his arrest. The Court cannot speculate as to whether the outcome of the applicant's trial would have been any different if he had obtained a private consultation with his solicitor. It agrees with the Government that a finding of a violation, in itself, constitutes sufficient just satisfaction for the purposes of Article 41 of the Convention.

B. Costs and expenses

68. The applicant claimed GBP 6,920.62 for legal costs and expenses, inclusive of value-added tax (VAT), of which GBP 4,700 was for solicitors' fees and expenses and GBP 2,220.62 was for counsel's fees.

69. The Government considered that these fees were very high for an application which did not go beyond the written stage and having regard to the lower legal fees chargeable in Northern Ireland. They suggested that GBP 3,000 was a reasonable figure.

70. Having regard to the awards made in comparable cases and making an assessment on an equitable basis, the Court awards the sum claimed by the applicant of GBP 6,920.62, inclusive of VAT.

C. Default interest

71. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 6 § 1 of the Convention and/or Article 6 § 3 (c) in respect of the deferral of access to the applicant's solicitor;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention and/or Article 6 § 3 (c) in respect of the police interviews;

3. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention taken in conjunction with Article 6 § 1 in respect of the presence of a police officer within hearing during the applicant's first consultation with his solicitor after his arrest;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, for costs and expenses, GBP 6,920.62 (six thousand nine hundred and twenty pounds sterling sixty-two pence), inclusive of VAT;
(b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;

6. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 16 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA
Registrar President