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

COURT (CHAMBER)

CASE OF FOX, CAMPBELL AND HARTLEY v. THE UNITED KINGDOM

(Application no. 12244/86; 12245/86; 12383/86)

JUDGMENT

STRASBOURG

30 August 1990

In the case of Fox, Campbell and Hartley[*],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr J. CREMONA,
Mr J. PINHEIRO FARINHA,
Sir Vincent EVANS,
Mr R. BERNHARDT,
Mr S.K. MARTENS,
Mrs E. PALM,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 29 March and 26 June 1990,

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

PROCEDURE

1. The case was brought before the Court by the European Commission of Human Rights ("the Commission") on 13 July 1989, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in three applications (nos. 12244/86, 12245/86 and 12383/86) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) of the Convention on 16 June 1986 by Mr Bernard Fox and Ms Maire Campbell and on 2 September 1986 by Mr Samuel Hartley, who are all three Irish citizens.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 5 and 13 (art. 5, art. 13) of the Convention.

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[*] Note by the Registrar: The case is numbered 18/1989/178/234-236. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of corresponding originating applications to the Commission.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyer who would represent them (Rule 30).

3. The Chamber to be constituted included ex officio Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 23 August 1989, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mr J. Pinheiro Farinha, Mr R. Macdonald, Mr S.K. Martens and Mrs E. Palm (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently, Mr R. Bernhardt, substitute judge, replaced Mr Macdonald, who was unable to take part in the consideration of the case (Rule 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the Delegate of the Commission and the representative of the applicants on the need for a written procedure (Rule 37 § 1). Thereafter, in accordance with the orders and directions of the President, the registry received the Government's memorial on 19 December 1989, the applicants' memorial on 10 January 1990, the appendices to that memorial two days later and the applicants' claims for just satisfaction under Article 50 (art. 50) of the Convention on 9 March 1990.

By letter received on 8 February 1990 the Secretary to the Commission advised the Registrar that the Delegate did not propose to file a memorial in reply.

5. After consulting, through the Registrar, those who would be appearing before the Court, the President directed on 21 December 1989 that the oral proceedings should open on 26 March 1990 (Rule 38).

6. The hearing took place in public in the Human Rights Buildings, Strasbourg, on the appointed day. The Court had held a preparatory meeting beforehand.

There appeared before the Court.

- for the Government

Mr M. WOOD, Legal Counsellor,
Foreign and Commonwealth Office, *Agent*,
Mr B. KERR, Q.C.,
Mr N. BRATZA, Q.C., *Counsel*;

- for the Commission

Mr C. ROZAKIS, *Delegate*;

- for the applicants

Mr R. WEIR, Q.C.,
Mr S. TREACY, Barrister-at-Law, *Counsel*,
Mr P. MADDEN, Solicitor.

The Court heard addresses by Mr Kerr for the Government, by Mr Rozakis for the Commission and by Mr Weir for the applicants, as well as their replies to its questions.

7. On the occasion of the hearing and on various dates thereafter a number of documents were filed by the applicants and the Government relating to the costs and expenses claimed under Article 50 (art. 50) of the Convention.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

A. As regards Mr Fox and Mrs Campbell

8. The first and second applicants, Mr Bernard Fox and Ms Maire Campbell, are husband and wife but separated. Both reside in Belfast, Northern Ireland.

9. On 5 February 1986 they were stopped by the police in Belfast and brought to Woodbourne Royal Ulster Constabulary ("RUC") station, where a full search of the vehicle in which they were travelling was carried out. Twenty-five minutes after their arrival at the police station, at 3.40 p.m., they were formally arrested under section 11 (1) of the Northern Ireland (Emergency Provisions) Act 1978 ("the 1978 Act"; see paragraph 16 below). They were informed that they were being arrested under this section and that this was because the arresting officer suspected them of being terrorists. They were also told that they could be detained for up to 72 hours. They were taken to Castlereagh Police Office, where they were separately interviewed by the police on the same day between 8.15 p.m. and 10.00 p.m.

10. During their detention Mr Fox and Ms Campbell were asked about their suspected involvement that day in intelligence gathering and courier work for the Provisional Irish Republican Army ("Provisional IRA"). They were also questioned about their suspected membership of this organisation. According to the Government, the information underlying the suspicion against them was already known to the police when they stopped their car.

No charges were brought against either applicant. The first applicant was released at 11.40 a.m. on 7 February 1986 and the second applicant five minutes later. Excluding the time taken to bring them to the police station, the first applicant had thus been detained 44 hours and the second applicant 44 hours and 5 minutes.

11. On being arrested both Mr Fox and Ms Campbell were shown the notice drawn up for persons held in police custody which explained their rights. They were not brought before a judge or given any opportunity to apply for release on bail. On 6 February they both initiated proceedings for habeas corpus but were released before the applications came on for hearing before a judge.

12. Mr Fox had been convicted in 1979 of several explosives offences, for which he received concurrent sentences of 12 years' imprisonment, and of belonging to the IRA, for which he received a concurrent sentence of 5 years. Ms Campbell received an 18 months' suspended sentence in 1979 after being convicted of involvement in explosives offences.

B. As regards Mr Hartley

13. The third applicant, Mr Samuel Hartley, resides in Waterfoot, County Antrim, Northern Ireland. On 18 August 1986 he was arrested at his home, in his parents' presence, at 7.55 a.m. He was informed at the time of his arrest that he was being arrested under section 11 (1) of the 1978 Act as he was suspected of being a terrorist. He was taken to Antrim police station where, on arrival, he was shown a copy of the notice for persons held in police custody. He was interviewed there by the police between 11.05 a.m. and 12.15 p.m.

14. Mr Hartley was suspected of involvement in a kidnapping incident which had taken place earlier that month in Ballymena when a young man and woman were forcibly taken away by masked armed men. Those involved in the kidnapping were thought to have connections with the Provisional IRA. The motive behind the kidnapping was believed to have been an attempt to force the young woman to retract an allegation of rape made the previous year as a result of which a person had been convicted and sentenced to 3 years' imprisonment. The Government said at the Commission hearing that their record of the first interview with Mr Hartley showed that he was questioned about terrorist activities in a specific small, geographical area, and about his involvement with the Provisional IRA. The record is not more detailed than that, but the area in question was where the kidnapping took place. The applicant Hartley denied any involvement in the kidnapping incident but he has not contradicted the Government's assertion that he was asked about it.

No charges were brought against him. He was released on 19 August 1986 at 2.10 p.m. after 30 hours and 15 minutes in detention. He brought no proceedings in connection with his arrest or detention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Introduction

15. For the past 20 years the population of Northern Ireland, which totals 1.5 million people, has been subjected to a campaign of terrorism (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, pp. 9-31, §§ 11-77, and the Brogan and Others judgment of 29 November 1988, Series A no. 145-B, p. 21, § 25). More than 2,750 people, including almost 800 members of the security forces, have been killed and 31,900 more have been maimed or injured. The campaign of terror has extended to the rest of the United Kingdom and to the mainland of Europe.

Special legislation has been introduced in an attempt to deal with this situation in Northern Ireland. Thus, the 1978 Act and its predecessors, the Northern Ireland (Emergency Provisions) Act 1973 ("the 1973 Act") and the Northern Ireland (Emergency Provisions) (Amendment) Act 1975 ("the 1975 Act"), were enacted to enable the security forces to deal more effectively with the threat of terrorism.

B. Section 11 of the 1978 Act

16. Section 11 of the 1978 Act conferred, inter alia, a power of arrest. The relevant parts of section 11, which was repealed in 1987, provided as follows:

> "1. Any constable may arrest without warrant any person whom he suspects of being a terrorist.
>
> ...
>
> 3. A person arrested under this section shall not be detained in right of the arrest for more than seventy-two hours after his arrest, and section 132 of the Magistrates' Courts Act (Northern Ireland) 1964 and section 50(3) of the Children and Young Persons Act (Northern Ireland) 1968 (requirement to bring arrested person before a magistrates' court not later than forty-eight hours after his arrest) shall not apply to any such person."

Sub-section (2) gave a power to enter and search premises where a suspected terrorist was or was suspected of being. Under sub-section (4) persons arrested under section 11 could be photographed and their finger prints and palm prints taken by a constable.

17. Section 31 (1) of the 1978 Act defines "terrorist" and "terrorism". A terrorist is "a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism". Terrorism is defined as "the

use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear".

Under section 21 of, and Schedule 2 to, the 1978 Act, certain organisations - one of which is the IRA, the Provisional IRA included - are proscribed organisations. It is an offence to belong to or profess to belong to such an organisation, to solicit or incite support for any such organisation, knowingly to make or receive any contribution to it, to solicit or invite a person to become a member or to carry out on its behalf orders or directions or requests by a member of the organisation.

18. The powers of arrest and detention under section 11 of the 1978 Act were originally an integral part of the scheme of interim custody introduced by the 1973 Act to replace internment (see the Ireland v. the United Kingdom judgment previously cited, Series A no. 25, pp. 38-39, § 88). By 1980 this scheme (as re-enacted in the 1975 and 1978 Acts) had been repealed with the exception of section 11 and the power was thereafter used as a free-standing power of arrest and detention for up to 72 hours.

Since its enactment in 1973 the legislation conferring this power was subject to periodic renewal by Parliament. Thus, under the 1978 Act (section 33) the relevant provisions became renewable, and were renewed, every six months until their repeal in 1987.

19. In 1983 the Secretary of State for Northern Ireland invited Sir George Baker, a retired senior member of the judiciary, to examine the operation of the 1978 Act to determine whether its provisions struck the right balance between maintaining as fully as possible the liberties of the individual whilst conferring on the security forces and courts adequate powers to protect the public from terrorist crime. There followed a number of recommendations in a report which was published in April 1984 (Command Paper, Cmnd. 9222). In his report Sir George Baker made the following remarks:

> "263. Generally I find it unhelpful in making recommendations in 1984 to go back further than 1973 but to understand the arrest and detention sections of the [1978 Act] it is useful to note that Regulation 10 of the Special Powers Act (Northern Ireland) 1922 provided:
>
> 'Any Officer of the RUC for the preservation of the peace and maintenance of order, may authorise the arrest without warrant and detention for a period of not more than 48 hours of any person for the purpose of interrogation.' (My emphasis).
>
> This general power of arrest for questioning did not disappear entirely when the Special Powers Act was repealed by Westminster. It was re-worded and to some extent re-enacted in the [1978 Act] and PTA [the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976]. But nowhere in these acts do the words 'for the purpose of interrogation' appear. That is left to be inferred. There is widespread criticism of the alleged illegal use of arrest for 'information gathering' or low grade intelligence and harassment. It might be better if the power of the RUC were expressly spelled out in the Act linked of course to appropriate controls. That the police have

such a power under the PTA was accepted by Lawton LJ in the English Court of Appeal (Criminal Division) in R. v. Houghton (1987) Criminal Appeal Reports 197.

264. In contrast to the provisions of the [1978 Act] which deal with the trial of terrorist offences and do not require derogation from Article 6 (art. 6) of the European Convention, those which deal with the powers of arrest appear to contravene the minimum requirements of Article 5 (art. 5). Consequently the United Kingdom entered a notice of derogation under Article 15 (art. 15). Article 5 § 1 (c) (art. 5-1-c) requires reasonable suspicion of having committed an offence and arrest for the purpose of bringing the offender before a competent court. Section 11 [of the 1978 Act] requires neither, nor is an offence necessary. ... Any action which can be taken to avoid the United Kingdom having to rely on the notice of derogation to excuse breaches of the Convention is desirable.

...

Suspicion or reasonable suspicion

280. Only a lawyer or a legislator would suspect (or reasonably suspect?) a difference. But there is one because, say the judges, with whom I agree, Parliament by using the two phrases must have so intended. The test for Section 11 is a subjective one: did the arrestor suspect? If his suspicion is an honest genuine suspicion that the person being arrested is a terrorist, a court cannot enquire further into the exercise of the power. But where the requirement is reasonable suspicion it is for the court to judge the reasonableness of the suspicion. It is an objective standard. The facts which raise the suspicion may be looked at by the court to see if they are capable of constituting reasonable cause. Reasonable suspicion is itself a lower standard than evidence necessary to prove a prima facie case. Hearsay may justify reasonable suspicion but may be insufficient for a charge.

281. The only danger that I can foresee if the requirement of reasonableness is added to suspicion is that the facts raising the suspicion might have come from a confidential source which could not be disclosed in court in a civil action for wrongful arrest. Against this there is the requirement of reasonable suspicion in Section 12 PTA which the RUC have used more extensively in 1982 and 1983. The figures for arrests are:

	Under S.11	Under S.12 PTA
	[of the 1978 Act]	
1982	1,902	828
1983 (to 1 October)	964	883 ...

The criterion of whether to use one in preference to the other in any given case has been the length of time the person to be arrested may be held.

...

283. No evidence has been given to me to suggest that suspicion as against reasonable suspicion has been a factor in a decision to use Section 11 in preference to

> Section 12 and indeed some senior police officers have told me it would not influence them. I also understand that the police are now trained to treat arrest for terrorist offences as requiring similar suspicion as for all other offences. I therefore conclude that reasonable suspicion should be required when a constable arrests without warrant and this should be included in the new arrest powers which I propose in substitution for Section 11(1) and in Section 13(1).
>
> ...
>
> 285. There is no need to name a specific offence when arresting under section 11 or to inform the suspect of the grounds on which he is being arrested as would be required by the common law, which is that 'a citizen is entitled to know on what charge or suspicion of what crime he is seized'. It is sufficient to say that the arrest is under the section on the grounds that he is suspected of being a terrorist. ..."

20. The exercise of the power of arrest in section 11 (1) has been considered by the House of Lords in the case of McKee v. Chief Constable for Northern Ireland [1985] 1 All England Law Reports 1-4. In that case the House of Lords held that the proper exercise of the power of arrest in section 11 depended upon the state of mind of the arresting officer. It was necessary that the arresting officer suspected the person he was arresting to be a terrorist; otherwise the arrest was unlawful. He could form that suspicion on the basis of information given to him by his superior officer, but he could not arrest under section 11 on the instructions of a superior officer who held the necessary suspicion unless the arresting officer himself held that suspicion. Lord Roskill, with whom the other Law Lords agreed, stated that the suspicion need not be a reasonable suspicion but it had to be honestly held. The requirement of a suspicion in the mind of a constable was a subjective test. That being so, the courts could only enquire as to the bona fides of the existence of the suspicion. The only issues were whether the constable had a suspicion and whether it was honestly held.

21. In addition, an arrest without warrant is subject to the common law rules laid down by the House of Lords in the case of Christie v. Leachinsky [1947] Appeal Cases 573 at 587 and 600. The person arrested must in ordinary circumstances be informed of the true grounds for his arrest, in a language which he understands, at the time he is taken into custody, or, if special circumstances exist to excuse this, as soon thereafter as it is reasonably practicable to inform him. A person is validly arrested under section 11 (1) of the 1978 Act if he is informed that he is being arrested under this provision as a suspected terrorist (in re McElduff [1972] Northern Ireland Reports 1 and McKee v. Chief Constable, loc. cit.).

22. Section 11 (1) of the 1978 Act was replaced by section 6 of the Northern Ireland (Emergency Provisions) Act 1987, which came into effect on 15 June 1987, subsequent to the facts of the present case. This new provision is confined to conferring a power of entry and search of premises for the purpose of arresting persons under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 (now section 14 of the

Prevention of Terrorism (Temporary Provisions) Act 1989 - see the Brogan and Others judgment previously cited, Series A no. 145-B, p. 22, § 30). These latter provisions expressly limit powers of arrest without a warrant to cases in which there are "reasonable grounds" for suspicion.

C. Remedies

23. A person who believed that his arrest or detention under section 11 was unlawful had two remedies, namely (a) an action for writ of habeas corpus, whereby a detained person may make an urgent application for his release from custody, and (b) a civil action claiming damages for false imprisonment (see the Brogan and Others judgment previously cited, Series A no. 145-B, p. 25, §§ 39-41). In either action the review of lawfulness would have encompassed procedural questions such as whether the arrested person has been properly informed of the true grounds for his arrest (Christie v. Leachinsky, loc. cit.); and whether the conditions for arrest under section 11 (1) had been complied with. As noted above, a court would not have enquired into the reasonableness of the suspicion grounding the arrest but rather whether the suspicion of the arresting officer was an honest one (McKee v. Chief Constable, loc. cit.).

PROCEEDINGS BEFORE THE COMMISSION

24. Mr Fox and Ms Campbell lodged their applications (nos. 12244/86 and 12245/86) with the Commission on 16 June 1986, and Mr Hartley lodged his application (no. 12383/86) on 2 September 1986. All three claimed that their arrest and detention were not justified under Article 5 § 1 (art. 5-1) of the Convention and that there had also been breaches of paragraphs 2, 4 and 5 of Article 5 (art. 5-2, art. 5-4, art. 5-5). They further alleged that, contrary to Article 13 (art. 13), they had no effective remedy before a national authority in respect of their Convention complaints.

On 11 December 1986 the Commission ordered the joinder of the three applications pursuant to Rule 29 of its Rules of Procedure, and on 10 May 1988 it declared the case admissible.

25. In its report adopted on 4 May 1989 (Article 31) (art. 31) the Commission expressed the opinion that in relation to each applicant there had been violation of paragraphs 1, 2 and 5 of Article 5 (art. 5-1, art. 5-2, art. 5-5) (by 7 votes to 5) but not of paragraph 4 (art. 5-4) (by 9 votes to 3). It also concluded (unanimously) that no separate issue arose under Article 13 (art. 13).

The full text of the Commission's opinion and of the separate opinions contained in the report is reproduced as an annex to this judgment[*].

FINAL SUBMISSIONS TO THE COURT

26. At the public hearing on 26 March 1990 the Government maintained in substance the concluding submission set out in their memorial, whereby they requested the Court

> "to decide and declare in respect of each of the three applicants:
>
> (i) that the facts disclose no breach of paragraphs 1, 2, 4 or 5 of Article 5 (art. 5-1, art. 5-2, art. 5-4, art. 5-5) of the Convention;
>
> (ii) that the facts disclose no breach of Article 13 (art. 13) of the Convention, alternatively that no separate issue arises under Article 13 (art. 13) of the Convention".

27. On the same occasion the applicants likewise maintained in substance the submission made at the close of their memorial, whereby they requested the Court

> "to decide and declare in respect of each of the three applicants:
>
> (i) that the facts disclose a breach of paragraphs 1, 2, 4 and 5 of Article 5 (art. 5-1, art. 5-2, art. 5-4, art. 5-5) of the Convention;
>
> (ii) that the facts disclose a breach of Article 13 (art. 13) of the Convention".

AS TO THE LAW

I. GENERAL APPROACH

28. The applicants' complaints are directed against their arrest and detention under criminal legislation enacted to deal with acts of terrorism connected with the affairs of Northern Ireland.

Over the last twenty years, the campaign of terrorism waged in Northern Ireland has taken a heavy toll, especially in terms of human life and suffering (see paragraph 15 above). The Court has already recognised the need, inherent in the Convention system, for a proper balance between the

[*] Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 182 of Series A of the Publications of the Court), but a copy of the Commission's report may be obtained by anyone on request to the Registrar.

defence of the institutions of democracy in the common interest and the protection of individual rights (see the Brogan and Others judgment of 29 November 1988, Series A no. 145-B, p. 27, § 48). Accordingly, when examining these complaints the Court will, as it did in the Brogan and Others judgment, take into account the special nature of terrorist crime and the exigencies of dealing with it, as far as is compatible with the applicable provisions of the Convention in the light of their particular wording and its overall object and purpose.

II. ALLEGED BREACH OF ARTICLE 5 § 1 (art. 5-1)

29. The applicants alleged a breach of Article 5 § 1 (art. 5-1) of the Convention, which, in so far as relevant, provides:

> "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 ...;
>
> ..."

They did not dispute that their arrest was "lawful" under Northern Ireland law for the purposes of this provision and, in particular, "in accordance with a procedure prescribed by law".

30. They did, however, argue that they had not been arrested and detained on "reasonable" suspicion of having committed an offence. Section 11 (1) of the 1978 Act, provided that "any constable may arrest without warrant any person whom he suspects of being a terrorist" (see paragraphs 9, 13 and 16 above). In their submission, this section was itself in direct conflict with Article 5 § 1 (c) (art. 5-1-c) in that it did not contain any requirement of reasonableness. They further agreed with the Commission's opinion that their arrests had not been shown on the facts to have been based on reasonable suspicion.

In addition, they maintained that the purpose of their arrest was not to bring them before the "competent legal authority" but rather to gather information without necessarily intending to charge them with a criminal offence. Both the respondent Government and the Commission rejected this contention.

31. For an arrest to be lawful under section 11 (1) of the 1978 Act, as construed by the House of Lords in the case of McKee v. Chief Constable for Northern Ireland, the suspicion needed only to be honestly held (see paragraph 20 above). In his report to Parliament in 1984, the Right

Honourable Sir George Baker highlighted the fact that the test for section 11 was a "subjective one". On the other hand, where the requirement was "reasonable suspicion" he considered that the test was "objective" and that it was "for the court to judge the reasonableness of the suspicion" (see paragraph 19 above).

Article 5 § 1 (c) (art. 5-1-c) speaks of a "reasonable suspicion" rather than a genuine and bona fide suspicion. The Court's task, however, is not to review the impugned legislation in abstracto but to examine its application in these particular cases.

32. The "reasonableness" of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c) (art. 5-1-c). The Court agrees with the Commission and the Government that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will however depend upon all the circumstances.

In this respect, terrorist crime falls into a special category. Because of the attendant risk of loss of life and human suffering, the police are obliged to act with utmost urgency in following up all information, including information from secret sources. Further, the police may frequently have to arrest a suspected terrorist on the basis of information which is reliable but which cannot, without putting in jeopardy the source of the information, be revealed to the suspect or produced in court to support a charge.

As the Government pointed out, in view of the difficulties inherent in the investigation and prosecution of terrorist-type offences in Northern Ireland, the "reasonableness" of the suspicion justifying such arrests cannot always be judged according to the same standards as are applied in dealing with conventional crime. Nevertheless, the exigencies of dealing with terrorist crime cannot justify stretching the notion of "reasonableness" to the point where the essence of the safeguard secured by Article 5 § 1 (c) (art. 5-1-c) is impaired (see, mutatis mutandis, the Brogan and Others judgment previously cited, Series A no. 145-B, pp. 32-33, § 59).

33. The majority of the Commission, with whom the applicants agreed, were of the opinion that "the Government [had] not provided any information which would allow the Commission to conclude that the suspicions against the applicants at the time of their arrest were 'reasonable' within the meaning of Article 5 § 1 (c) (art. 5-1-c) of the Convention or that their arrest was based on anything more than the 'honestly held suspicion' which was required under Northern Ireland law" (see paragraph 61 of the Commission's report).

The Government argued that they were unable to disclose the acutely sensitive material on which the suspicion against the three applicants was based because of the risk of disclosing the source of the material and

thereby placing in danger the lives and safety of others. In support of their contention that there was nevertheless reasonable suspicion, they pointed to the facts that the first two applicants had previous convictions for serious acts of terrorism connected with the Provisional IRA (see paragraph 12 above) and that all three applicants were questioned during their detention about specific terrorist acts of which they were suspected (see paragraphs 10 and 14 above). In the Government's submission these facts were sufficient to confirm that the arresting officer had a bona fide or genuine suspicion and they maintained that there was no difference in substance between a bona fide or genuine suspicion and a reasonable suspicion. The Government observed moreover that the applicants themselves did not contest that they were arrested and detained in connection with acts of terrorism (see paragraph 55 of the Commission's report).

The Government also stated that, although they could not disclose the information or identify the source of the information which led to the arrest of the applicants, there did exist in the case of the first and second applicants strong grounds for suggesting that at the time of their arrest the applicants were engaged in intelligence gathering and courier work for the Provisional IRA and that in the case of the third applicant there was available to the police material connecting him with the kidnapping attempt about which he was questioned.

34. Certainly Article 5 § 1 (c) (art. 5-1-c) of the Convention should not be applied in such a manner as to put disproportionate difficulties in the way of the police authorities of the Contracting States in taking effective measures to counter organised terrorism (see, mutatis mutandis, the Klass and Others judgment of 6 September 1978, Series A no. 28, pp. 27 and 30-31, §§ 58 and 68). It follows that the Contracting States cannot be asked to establish the reasonableness of the suspicion grounding the arrest of a suspected terrorist by disclosing the confidential sources of supporting information or even facts which would be susceptible of indicating such sources or their identity.

Nevertheless the Court must be enabled to ascertain whether the essence of the safeguard afforded by Article 5 § 1 (c) (art. 5-1-c) has been secured. Consequently the respondent Government have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence. This is all the more necessary where, as in the present case, the domestic law does not require reasonable suspicion, but sets a lower threshold by merely requiring honest suspicion.

35. The Court accepts that the arrest and detention of each of the present applicants was based on a bona fide suspicion that he or she was a terrorist, and that each of them, including Mr Hartley, was questioned during his or her detention about specific terrorist acts of which he or she was suspected.

The fact that Mr Fox and Ms Campbell both have previous convictions for acts of terrorism connected with the IRA (see paragraph 12 above), although it could reinforce a suspicion linking them to the commission of terrorist-type offences, cannot form the sole basis of a suspicion justifying their arrest in 1986, some seven years later.

The fact that all the applicants, during their detention, were questioned about specific terrorist acts, does no more than confirm that the arresting officers had a genuine suspicion that they had been involved in those acts, but it cannot satisfy an objective observer that the applicants may have committed these acts.

The aforementioned elements on their own are insufficient to support the conclusion that there was "reasonable suspicion". The Government have not provided any further material on which the suspicion against the applicants was based. Their explanations therefore do not meet the minimum standard set by Article 5 § 1 (c) (art. 5-1-c) for judging the reasonableness of a suspicion for the arrest of an individual.

36. The Court accordingly holds that there has been a breach of Article 5 § 1 (art. 5-1). This being so, it is not considered necessary to go into the question of the purpose of the applicants' arrests (see paragraph 30 above).

III. ALLEGED BREACH OF ARTICLE 5 § 2 (art. 5-2)

37. The applicants alleged a violation of Article 5 § 2 (art. 5-2), which reads:

> "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."

The Commission upheld this claim which was rejected by the Government.

38. In the applicants' submission, Article 5 § 1 (c) (art. 5-1-c) refers to the grounds justifying the arrest and these are what should be communicated to detainees. They argued that suspected terrorism in itself is not necessarily an offence justifying an arrest under section 11. Accordingly, in breach of Article 5 § 2 (art. 5-2) they were not given at the time of their arrest adequate and understandable information of the substantive grounds for their arrest. In particular, they maintained that the national authorities' duty to "inform" the person is not complied with where, as in their cases, the person is left to deduce from the subsequent police interrogation the reasons for his or her arrest.

39. The Government submitted that the purpose of Article 5 § 2 (art. 5-2) is to enable an arrested person to judge the lawfulness of the arrest and take steps to challenge it if he sees fit. They argued that the information given need not be detailed and that it was enough that the arrested person should be informed promptly of the legal basis of his detention and of the

"essential facts relevant under (domestic law) for the determination of the lawfulness of his detention". Applying these principles to the facts of the present case they contended that the requirements of Article 5 § 2 (art. 5-2) were clearly met.

40. Paragraph 2 of Article 5 (art. 5-2) contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5 (art. 5): by virtue of paragraph 2 (art. 5-2) any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4 (art. 5-4) (see the van der Leer judgment of 21 February 1990, Series A no. 170, p. 13, § 28). Whilst this information must be conveyed "promptly" (in French: "dans le plus court délai"), it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features.

41. On being taken into custody, Mr Fox, Ms Campbell and Mr Hartley were simply told by the arresting officer that they were being arrested under section 11 (1) of the 1978 Act on suspicion of being terrorists (see paragraphs 9 and 13 above). This bare indication of the legal basis for the arrest, taken on its own, is insufficient for the purposes of Article 5 § 2 (art. 5-2), as the Government conceded.

However, following their arrest all of the applicants were interrogated by the police about their suspected involvement in specific criminal acts and their suspected membership of proscribed organisations (see paragraphs 9, 10, and 14 above). There is no ground to suppose that these interrogations were not such as to enable the applicants to understand why they had been arrested. The reasons why they were suspected of being terrorists were thereby brought to their attention during their interrogation.

42. Mr Fox and Ms Campbell were arrested at 3.40 p.m. on 5 February 1986 at Woodbourne RUC station and then separately questioned the same day between 8.15 p.m. and 10.00 p.m. at Castlereagh Police Office (see paragraph 9 above). Mr Hartley, for his part, was arrested at his home at 7.55 a.m. on 18 August 1986 and taken to Antrim Police Station where he was questioned between 11.05 a.m. and 12.15 p.m. (see paragraph 13 above). In the context of the present case these intervals of a few hours cannot be regarded as falling outside the constraints of time imposed by the notion of promptness in Article 5 § 2 (art. 5-2).

43. In conclusion there was therefore no breach of Article 5 § 2 (art. 5-2) in relation to any of the applicants.

IV. ALLEGED BREACH OF ARTICLE 5 § 4 (art. 5-4)

44. The applicants contended that, as the Convention had not been incorporated into United Kingdom law, they had been unable to challenge the lawfulness of their detention before the domestic courts in accordance with Article 5 § 4 (art. 5-4), which provides:

> "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."

The majority of the Commission concluded that there had been no such violation. They were of the opinion that the important safeguard contained in Article 5 § 4 (art. 5-4) became devoid of purpose where, as in the present case, the detainees were released before a speedy determination of the lawfulness of the detention could take place.

The Government submitted that the courts, in an action for habeas corpus, can examine both the procedural legality of the detention and whether the person was genuinely suspected of being a terrorist. In the alternative, they followed the Commission's view.

In reply, the applicants adopted the reasoning of Mr Danelius in his dissenting opinion in the Commission's report. He took the view that the entitlement set out in Article 5 § 4 (art. 5-4) was also valid for short periods of detention; and that neither an application for habeas corpus nor a claim for damages for false imprisonment could ever secure this entitlement as interpreted by the Court in its Brogan and Others judgment (loc. cit., pp. 34-35, § 65), since the existence of a reasonable suspicion was not a condition for the lawfulness of an arrest effected under section 11 (1) of the 1978 Act.

45. Mr Fox and Ms Campbell were detained for approximately 44 hours, Mr Hartley for approximately 30 hours (see paragraphs 10 and 14 above). Mr Hartley brought no proceedings in connection with his arrest or detention (see paragraph 14 above). On the other hand, on the day following their arrest both Mr Fox and Ms Campbell instituted proceedings for habeas corpus, but they were released before the applications came on for hearing before a judge (see paragraph 11 above).

All three applicants were released speedily before any judicial control of their detention had taken place. It is not for the Court to rule in abstracto as to whether, had this not been so, the scope of the remedies available would or would not have satisfied the requirements of Article 5 § 4 (art. 5-4).

Accordingly, the Court does not find it necessary to examine the merits of the applicants' complaint under Article 5 § 4 (art. 5-4).

V. ALLEGED BREACH OF ARTICLE 5 § 5 (art. 5-5)

46. The applicants further alleged a breach of Article 5 § 5 (art. 5-5), which reads:

"Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article (art. 5) shall have an enforceable right to compensation."

Their arrest and detention have been held to be in breach of paragraph 1 of Article 5 (art. 5-1) (see paragraph 36 above). This violation could not give rise, either before or after the findings made by this Court in the present judgment, to an enforceable claim for compensation by the victims before the Northern Ireland courts (see the above-mentioned Brogan and Others judgment, Series A no. 145-B, p. 35, § 67).

There has therefore been a violation of paragraph 5 of Article 5 (art. 5-5) in respect of all three applicants.

VI. ALLEGED BREACH OF ARTICLE 13 (art. 13)

47. Finally, the applicants submitted that the facts of their cases also disclosed a breach of Article 13 (art. 13), which provides:

"Everyone whose rights and freedoms as set forth in [the] 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."

In the light of its findings in paragraphs 43 and 45 above, the Court does not deem it necessary to examine this complaint.

VII. APPLICATION OF ARTICLE 50 (art. 50)

48. By virtue of Article 50 (art. 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 ... 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."

The applicants did not submit any claim for pecuniary damage. They did, however, seek substantial compensation in such amount as the Court considered equitable for the non-pecuniary damage allegedly suffered by each of them, together with the sum of £37,500 in respect of their costs and expenses referable to the proceedings before the Convention institutions. They expressed their willingness to endeavour to agree the appropriate amounts with the Government and only to refer the matter to the Court for assessment in default of such agreement.

The Government considered it more appropriate to reserve their submissions as to the compensation claim until the delivery of the Court’s judgment on the substantive issues.

In these circumstances, therefore, the Court considers that the question of the application of Article 50 (art. 50) is not ready for decision and must be reserved.

FOR THESE REASONS, THE COURT

1. Holds by four votes to three that there has been a breach of Article 5 § 1 (art. 5-1);

2. Holds unanimously that there has been no breach of Article 5 § 2 (art. 5-2);

3. Holds by four votes to three that there has been a breach of Article 5 § 5 (art. 5-5);

4. Holds unanimously that it is unnecessary to examine the complaints under Article 5 § 4 and Article 13 (art. 5-4, art. 13);

5. Holds unanimously that the question of the application of Article 50 (art. 50) is not ready for decision;

accordingly,

(a) reserves the whole of the said question;

(b) invites the Government and the applicants to submit, within the coming three months, their written comments thereon and, in particular, to notify the Court of any agreement reached between them;

(c) reserves the further procedure and delegates to the President of the Court power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 August 1990.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 53 § 2 of the Rules of Court, the joint dissenting opinion of Sir Vincent Evans, Mr Bernhardt and Mrs Palm is annexed to this judgment.

R.R.
M.-A.E.

JOINT DISSENTING OPINION OF JUDGES SIR VINCENT EVANS, BERNHARDT AND PALM

We are unable to agree with the finding of the majority of the Court that there has been a violation of Article 5 § 1 (c) (art. 5-1-c) in this case.

The majority take the view that the facts and information laid before the Court by the Government are insufficient to support the conclusion that there was "reasonable suspicion" justifying the arrest and detention of the applicants under Article 5 § 1 (c) (art. 5-1-c) (see paragraph 35 of the Court’s judgment). We do not share this opinion.

The majority accept - and on this we agree - that the arrest and detention of each of the applicants was based on a bona fide suspicion that he or she was a terrorist and that each of them was questioned during his or her detention about specific terrorist acts of which he or she was suspected. But, in the opinion of the majority the latter fact does no more than confirm that the arresting officers had a genuine suspicion and a genuine suspicion was not the equivalent of a reasonable suspicion.

In our view the "genuine suspicion" on the part of the arresting officers that the applicants were involved in the specific terrorist acts about which they were questioned must have had some basis in information received by them, albeit from sources which the Government maintain that they are unable to disclose for security reasons. In the situation in Northern Ireland the police must have a responsibility to follow up such information of involvement in terrorist activities and, if circumstances so warrant, to arrest and detain the suspect for further investigation.

In cases such as these it is not possible to draw a sharp distinction between genuine suspicion and reasonable suspicion. Having regard to all the circumstances and to the facts and information before the Court, including in the case of Mr Fox and Ms Campbell the fact that they had previously been involved in and convicted of terrorist activities, we are satisfied that there were reasonable grounds for suspicion justifying the arrest and detention of the applicants in accordance with Article 5 § 1 (c) (art. 5-1-c). We also see no reason to doubt that the applicants were detained and questioned with a view to criminal proceedings if sufficient and usable evidence had been obtained. It is true that they were released without any charges being brought against them, but this in no way invalidates the measures taken since it is the purpose of such investigation to find out whether the suspicion is confirmed and supported by any additional evidence.

For these reasons we conclude that there was no breach of Article 5 § 1 (c) (art. 5-1-c).