Caso Murray contra Reino Unido, de 28/10/1994 [ENG]

No violation of Art. 5-1
EUROPEAN COURT OF HUMAN RIGHTS
In the case of Murray v. the United Kingdom*,
The European Court of Human Rights, sitting, in pursuance of Rule 51 of Rules of Court A**, as a Grand Chamber composed of the following judges:
Mr R. Ryssdal, President, Mr R. Bernhardt, Mr F. Gölcüklü, Mr R. Macdonald, Mr A. Spielmann, Mr S.K. Martens, Mr I. Foighel, Mr R. Pekkanen, Mr A.N. Loizou, Mr J.M. Morenilla, Sir John Freeland, Mr A.B. Baka, Mr M.A. Lopes Rocha, Mr L. Wildhaber, Mr G. Mifsud Bonnici, Mr J. Makarczyk, Mr P. Jambrek, Mr K. Jungwiert,
and also of Mr H. Petzold, Acting Registrar,
Having deliberated in private on 23 April and 21 September 1994,
Delivers the following judgment, which was adopted on the last-mentioned date:
-------Notes by the Registrar
* The case is numbered 13/1993/408/487. 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 the corresponding originating applications to the Commission.
** Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.--------

PROCEDURE
1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 7 April 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14310/88) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) on 28 September 1988 by Mrs Margaret Murray, Mr Thomas Murray, Mr Mark Murray, Ms Alana Murray, Ms Michaela Murray and Ms Rossina Murray, who are all 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 as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 paras. 1, 2 and 5, Article 8 and Article 13 (art. 5-1, art. 5-2, art. 5-5, art. 8, art. 13) of the Convention.
2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and

designated the lawyers who would represent them (Rule 30). The Government of Ireland, having been reminded by the Registrar of their right to intervene (Article 48 (b) of the Convention and Rule 33 para. 3 (b)) (art. 48-b), did not indicate any intention of so doing.

3. The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 23 April 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr L.-E. Pettiti, Mr N. Valticos, Mr J.M. Morenilla, Mr M.A. Lopes Rocha, Mr L. Wildhaber and Mr G. Mifsud Bonnici (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the orders made in consequence, the Government's memorial was lodged at the registry on 3 November 1993, the applicants' memorial on 15 November and their claims for just satisfaction under Article 50 (art. 50) of the Convention on 23 December 1993, 18 and 20 January 1994. In a letter received on 14 December 1993 the Secretary to the Commission informed the Registrar that the Delegate did not wish to comment in writing on the memorials filed.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 January 1994. The Chamber had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr H. Llewellyn, Assistant Legal Adviser, Foreign and Commonwealth Office, Agent, Mr R. Weatherup, QC, Mr J. Eadie, Barrister-at-law, Counsel;

(b) for the Commission

Mr M.P. Pellonpää, Delegate;

(c) for the applicants

Mr R. Weir, QC, Mr S. Treacy, Barrister-at-law, Counsel, Mr P. Madden, Solicitor.

The Court heard addresses by Mr Pellonpää, Mr Weir and Mr Weatherup.

6. Following deliberations held on 28 January 1994 the Chamber decided to relinquish jurisdiction forthwith in favour of a Grand Chamber (Rule 51 para. 1).

7. The Grand Chamber to be constituted included ex officio Mr Ryssdal, President of the Court, Mr Bernhardt, Vice-President of the Court, and the other members of the Chamber which had relinquished jurisdiction (Rule 51 para. 2 (a) and (b)). On 28 January 1994, in the presence of the Registrar, the President drew by lot the names of the ten additional judges called on to complete the Grand Chamber, namely Mr R. Macdonald, Mr A. Spielmann, Mr S.K. Martens, Mr I. Foighel, Mr R. Pekkanen, Mr A.N. Loizou, Mr A.B. Baka, Mr J. Makarczyk, Mr P. Jambrek and Mr K. Jungwiert (Rule 51 para. 2 (c)). Mr Pettiti, a member of the original Chamber, was unable to take part in the Grand Chamber's consideration of the case and was replaced by Mr F. Gölcüklü in accordance with the drawing of lots effected under Rule 51 para. 2 (c). Mr Valticos, also a member of the original Chamber, was prevented at a later stage from continuing to take part in the Grand Chamber's deliberations.

8. The Grand Chamber held a meeting devoted to procedural matters on 24 March 1994.

Having taken note of the concurring opinions of the Agent of the Government, the Delegate of the Commission and the applicants, the Grand Chamber decided on 23 April

1994 that the consideration of the case should continue without resumption of the oral proceedings (Rule 26).

AS TO THE FACTS

I. Particular circumstances of the case

A. Introduction

9. The six applicants are members of the same family. The first applicant, Mrs Margaret Murray, and the second applicant, Mr Thomas Murray, are husband and wife. The other four applicants are their children, namely their son Mark Murray (born in 1964), their twin daughters Alana and Michaela Murray (born in 1967) and a younger daughter Rossina Murray (born in 1970). At the relevant time in 1982 all six applicants resided together in the same house in Belfast, Northern Ireland.

10. On 22 June 1982 two of the first applicant's brothers were convicted in the United States of America ("USA") of arms offences connected with the purchase of weapons for the Provisional Irish Republican Army ("Provisional IRA"). The Provisional IRA is included among the organisations proscribed under the special legislation enacted in the United Kingdom to deal with terrorism in Northern Ireland (see paragraph 35 below).

B. First applicant's arrest

11. On 26 July 1982 at approximately 6.30 a.m. Corporal D., a member of the Women's Royal Army Corps, attended an Army briefing at which she was told that the first applicant was suspected of involvement in the collection of money for the purchase of arms for the IRA in the USA, this being a criminal offence under section 21 of the Northern Ireland (Emergency Provisions) Act 1978 ("the 1978 Act") and section 10 of the Prevention of Terrorism (Temporary Provisions) Act 1976. The corporal was instructed to go to the first applicant's house, arrest her under section 14 of the 1978 Act (see paragraphs 36-38 below) and bring her back to the Army screening centre at Springfield Road in Belfast.

12. At 7 a.m. Corporal D., who was unarmed but accompanied by five armed soldiers, arrived by Army vehicle at the applicants' home. The first applicant herself answered the door and three of the male soldiers, together with Corporal D., entered the house. Corporal D. established the identity of the first applicant and asked her to get dressed. Corporal D. went upstairs with the first applicant. The other applicants were roused and asked to assemble in the living room. The soldiers did not carry out any search of the contents of the house, but made written notes as to the interior of the house and recorded personal details concerning the applicants. At about 7.30 a.m. in the hallway of the house Corporal D., with one of the soldiers acting as a witness, said to the first applicant, "As a member of Her Majesty's forces, I arrest you." On being asked twice by the first applicant under what section, Corporal D. replied, "Section 14."

C. First applicant's questioning

13. The first applicant was then driven to the Army screening centre at Springfield Road, Belfast. She was escorted into a building and asked to sit for a short time in a small cubicle. At 8.05 a.m. she was taken before Sergeant B. who asked her questions with a view to completing part 1 of a standard form to record, inter alia, details of the arrest and screening procedure and personal details. The first applicant refused to answer any questions save to give her name and she refused to be photographed. The interview ended four minutes later. She was then examined by a medical orderly who endeavoured to establish whether she suffered from certain illnesses, but she again refused to co-operate and did not answer any of his questions.

14. At 8.20 a.m. she was taken to an interview room and questioned by a soldier in civilian clothes in the presence of Corporal D. She was asked, inter alia, about her brothers and her contacts with them, but she still refused to answer questions. After the interview, which ended at 9.35 a.m., she was returned to the reception area and then taken back to the medical orderly who asked her if she had any complaints. She did not reply to this query.

At some stage during her stay in the centre she was photographed without her knowledge or consent. This photograph and the personal details about her, her family and her home were kept on record.

She was released at 9.45 a.m. without being charged.

15. The standard record form, called the "screening proforma", recorded the first applicant's name, address, nationality, marital and tenancy status, the chronological details about her arrest, the names of the Army personnel involved, the names of the other applicants and their relationship to her, her physique and her attitude to the interview. Under the heading "Additional information ... concerning the arrestee (as reported by the arresting soldier)", it stated: "Subject is the sister of C... M... who was arrested in USA. Questioned on the above subject." Nothing however was recorded under the heading "Suspected offence". It noted that the applicant had refused to answer questions and that no information had been gained from the interview.

D. Proceedings before the High Court

16. Some eighteen months later, on 9 February 1984, the first applicant brought an action against the Ministry of Defence for false imprisonment and other torts.

17. In those proceedings one of the principal allegations made by the first applicant was that her arrest and detention had been effected unlawfully and for an improper purpose. Her allegations were summarised in the judgment of Murray J. given on 25 October 1985:

"The plaintiff's counsel launched a series of attacks on the legality of the plaintiff's arrest and detention which varied in thrust between the very broad and the very narrow. In the former class, for example, was an attack in which they alleged that the use of section 14 of the [1978 Act] in this case was an example of what they called 'an institutionalised form of unlawful screening' by the military authorities, with the intention of obtaining what counsel termed 'low level intelligence' from the plaintiff, and without (a) any genuine suspicion on the part of those authorities that she had committed a criminal offence or (b) any genuine intention on their part of questioning her about a criminal offence alleged to have been committed by her."

18. In support of this case the first applicant's counsel not only called and examined the applicant herself but extensively cross-examined the two witnesses called on behalf of the defendants, namely Corporal D. and Sergeant B.

19. The evidence given by the first applicant is recorded in a note drafted by the trial judge, there being no transcript of the first day of the trial as a result of a technical mishap with the recording equipment. The first applicant explained how she had found the conditions of her arrest and detention distressing for her. She had been angry but had not used strong language. She testified that whilst at the Army centre she had refused to be photographed, to be weighed by the medical orderly, to sign any documents and to answer questions, whether put by Sergeant B., the medical orderly or the interviewer, apart from giving her name. She had made it clear that she would not be answering any questions. She alleged that Sergeant B. had told her in so many words that the Army knew that she had not committed any crime but that her file had been lost and the Army wanted to update it. She said that she had been questioned about her brothers in the

USA, their whereabouts and her contacts with them, but not about the purchase of arms for the Provisional IRA or about any offence. She accepted that she had been in contact with her brothers and had been to the USA, including a visit that year (1985). She believed that the Army had wanted to obtain information about her brothers. On leaving the centre, she had told the officials that she would be seeing them in court.

20. As appears from the transcript of her evidence, Corporal D. gave an account of her briefing on the morning of the arrest. She stated that at the briefing she had been told the first applicant's name and address and the grounds on which she was wanted for questioning, namely her suspected involvement in the collection of money for the purchase of weapons from America. She testified that "my suspicions were aroused by my briefing, and my belief was that Mrs Murray was suspected of collecting money to purchase arms".

Under cross-examination Corporal D. maintained that the purpose of an arrest and detention under section 14 of the 1978 Act was not to gather intelligence but to question a suspected person about an offence. She stated that her suspicion of the first applicant had been formed on the basis of everything she had been told at the briefing and which she had read in a document which had been supplied to her then. Corporal D. stated that she would not have effected the arrest unless she had been given the grounds on which she was expected to arrest the person. Under repeated questioning, Corporal D. maintained that she had been informed at the briefing, and that she had formed the suspicion, that the applicant had been involved in the collection of money for the purchase of arms from America.

21. Corporal D. was further examined about the interrogation of the first applicant at Springfield Road. She stated that she recalled that questions had been asked of the applicant by the interviewer and that the applicant had refused to answer any questions put to her. She recalled that the interviewer had asked a few more questions when he returned to the room after leaving it but that she could not really remember what they were about. Counsel for the defence returned to the question of the interview of the applicant towards the end of his examination of Corporal D. in the following exchange:

Q. "... Now while you were, just going back for a moment to the time when what I might call the interview, that's when the three of you were in the room, and the two occasions you've said she had to leave, you took her to, she wanted to go to the lavatory. Do you just have no recollection of any of the questions that were asked?"

A. "I don't remember the questions as they were asked. There was a question regards money. A question regards America."

No cross-examination by the first applicant's counsel was directed to this reply of the witness.

22. Sergeant B. was examined and cross-examined about his completion of part 1 of the standard record form when standing at the reception desk. He said that the first applicant had stated her name but refused to give her address or date of birth or any further information. He expressly denied the applicant's allegation that he had said to her that he knew she was not a criminal and that he just wanted to update her files which had been lost. He gave evidence that information recorded in 1980 on the occasion of a previous arrest of the first applicant had in any event not been lost, since it had been used to complete the details on the first page of the form when she had refused to answer any questions.

Under cross-examination Sergeant B. did not accept that the main purpose of questioning a person arrested under section 14 of the 1978 Act was to gather general

information about the background, family and associates of the arrested person. He maintained that persons were only arrested and detained if there existed a suspicion against them of involvement in a criminal offence.

23. The issue of the interview of the first applicant was specifically addressed in the final submission of defence counsel, in which the following exchange is partially recorded in the transcript:

"MR. CAMPBELL: My Lord ... your Lordship has the grounds upon which the arresting officer carries out (inaudible) she then gives evidence and is present throughout the interview ... now I talk about the interview on the very last stage.

JUDGE: At the table?

MR. CAMPBELL: At the table, and said that in the course of that interview money and arms that these matters were raised, I can't ... hesitate to use the (inaudible) now that is one point. The other point is this, that this was a lady who on her own admission was not going to answer any questions. She agreed during cross-examination that that was the attitude and so one finds that an interview takes place with somebody who is not prepared to answer any questions but at least the questions are raised with her concerning the matter on which she was arrested.

JUDGE: Is the substance of that then that because of her fairly firm refusal you would say to answer any questions there was never any probing examination of her collecting money for example?

MR. CAMPBELL: No my Lord because she ... as she said she wasn't going to answer any questions."

24. In his judgment of 25 October 1985 Murray J. gave detailed consideration to the evidence of Corporal D. and Sergeant B. on the one hand and the first applicant on the other. Murray J. "could not possibly accept the [first applicant's] evidence" that she had been told by Sergeant B. that she was not suspected of any offence and that he was just updating his records. He similarly rejected the applicant's claim that Corporal D. at no time genuinely suspected her of having committed an offence. In the light of the evidence of Corporal D. herself, who was described as a "transparently honest witness", the judge was

"quite satisfied that on the basis of her briefing at Musgrave Park she genuinely suspected the [first applicant] of having been involved in the offence of collecting money in Northern Ireland for arms".

25. Murray J. also rejected the first applicant's claim that section 14 of the 1978 Act had been used with a view to screening in order to gain low-level intelligence: he accepted the evidence of Corporal D. and Sergeant B., which had been tested in cross-examination, that the purpose of the applicant's arrest and detention under the section had been to establish facts concerning the offence of which she was suspected.

Murray J. also believed the evidence of Corporal D. that there were questions addressed to the matters of which the applicant was suspected. He stated:

"As regards the interviewer, the plaintiff accepted that he was interested in the activities of her brothers who shortly before the date of the interview had been convicted on arms charges in the USA connected with the Provisional IRA but the [first applicant], who seems to have been well aware of her rights, obviously had decided not to co-operate with the military staff in the centre. In particular she had decided (it seems) not to answer any of their questions and in this situation, and with the short detention period permitted by the section, there was little that the interviewer or any of the other staff in the centre could do to pursue their suspicions."

26. Murray J. likewise rejected the first applicant's argument that the photographing of her gave rise to a cause of action. His understanding of the law was that merely taking the photograph of a person, even against their will, without physically interfering with or defaming the person was not tortious.

27. The first applicant's action before the High Court was therefore dismissed.

E. Proceedings before the Court of Appeal

28. The first applicant thereupon appealed to the Court of Appeal. She again challenged the legality of her arrest on the grounds, inter alia

"(1) that the arresting officer did not have, or was not sufficiently proved to have, the requisite suspicion; (2) that she did not have sufficiently detailed knowledge or understanding of what was alleged against the plaintiff to warrant the conclusion that it was an offence which would justify arrest".

In its judgment of 20 February 1987 the Court of Appeal unanimously rejected both these grounds. In delivering judgment, Gibson LJ noted:

"[The trial judge had] found, and his finding was amply justified by the evidence, that [Corporal D.] genuinely suspected the plaintiff of having been involved in the offence of collecting money in Northern Ireland for arms to be purchased in America for use by a proscribed organisation."

In particular, as to the second ground Gibson LJ observed:

"Suspicion is something less than proof, and may exist without evidence, though it must be supported by some reason."

29. The Court of Appeal further unanimously rejected the first applicant's complaint that the purpose of her arrest and detention, and the whole purport of her questioning, was a fishing expedition unrelated to the matters of which she was suspected and designed to obtain low-grade intelligence about the applicant and others. In rejecting this complaint, the Court of Appeal took account of the evidence which had been adduced on both sides:

"Corporal D. who was present during the interview had very little recollection of the course of the questions. The only other witness as to the conduct of this interview was the [first applicant]. Her account also is sketchy, though in somewhat more detail. What is clear from both witnesses is that the [first applicant] was deliberately unhelpful and refused to answer most of the questions. What is certain is that she was asked about her brothers ... who in the previous month had been convicted of offences connected with the purchase of firearms in the USA for use by the IRA [and for which offences they had been sentenced to terms of two and three years' imprisonment]. It is clear that it was for such a purchase that the [first applicant] was suspected of having collected money, as she stated the interviewer asked her whether she was in contact with them. There is no doubt, therefore, that the interviewer did attempt to pursue the subject of the suspicion which had been the occasion for her arrest but was unable to make any headway."

30. The first applicant's appeal to the Court of Appeal also concerned certain related matters such as the legality of the search of the applicants' house, in respect of which the Court of Appeal found that there was a sufficient basis in section 14(3) of the 1978 Act (see paragraphs 36 and 38(d) below). The Court of Appeal held that the implied authority granted to the Army under section 14 included a power to interrogate a detained person and, as a practical necessity, a power to record personal particulars and details concerning the arrest and detention. It further found that the standard record form known as the "screening proforma" contained no information which might not have been relevant to the resolution of the suspicion.

As regards the applicant's complaint that she had been photographed without her knowledge, the Court of Appeal stated as follows:

"The act of taking the photograph involved nothing in the nature of a physical assault. Whether such an act would constitute an invasion of privacy so as to be actionable in the United States is irrelevant, because the [first applicant] can only recover damages if it amounts to a tort falling within one of the recognised branches of the law on the topic. According to the common law there is no remedy if someone takes a photograph of another against his will. Reliance was placed on section 11(4) of the [1978] Act by counsel for the [first applicant] ... This provision gives power to the police to order [in addition to the taking of a photograph] the taking of finger prints without the necessity of charging the person concerned and applying for an order of the magistrate under article 61 of the Magistrates Courts (Northern Ireland) Order 1981, which contains no comparable provision as to the taking of photographs. The taking of finger prints otherwise than by consent must involve an assault and I am satisfied that section 11(4) was enacted not to legalise the taking of photographs without consent, but to legalise the taking of photographs or finger prints in circumstances where there would otherwise have been an illegal assault. It does not involve the implication that the taking of a photograph without violence and without consent is actionable."

F. Proceedings before the House of Lords

31. The first applicant was granted leave by the Court of Appeal to appeal to the House of Lords. This appeal was rejected on 25 May 1988 (Murray v. Ministry of Defence, [1988] Weekly Law Reports 692).

32. In the House of Lords the applicant did not pursue the allegation that she had not been arrested on the basis of a genuine and honest suspicion that she had committed an offence.

She did however pursue the complaint, previously raised before the Court of Appeal, that since she was only lawfully arrested at 7.30 a.m. she had been unlawfully detained between 7.00 and 7.30 a.m. The House of Lords found that a person is arrested from the moment he is subject to restraint and that the first applicant was therefore under arrest from the moment that Corporal D. identified her on entering the house at 7 a.m.. It made no difference that the formal words of arrest were communicated to the applicant at 7.30 a.m. In this respect Lord Griffiths stated (at pp. 698H-699A):

"If the plaintiff had been told she was under arrest the moment she identified herself, it would not have made the slightest difference to the sequence of events before she left the house. It would have been wholly unreasonable to take her off, half-clad, to the Army centre, and the same half-hour would have elapsed while she gathered herself together and completed her toilet and dressing. It would seem a strange result that in these circumstances, whether or not she has an action for false imprisonment should depend upon whether the words of arrest are spoken on entering or leaving the house, when the practical effect of the difference on the plaintiff is non-existent."

33. The first applicant had also maintained that the failure to inform her that she was arrested until the soldiers were about to leave the house rendered the arrest unlawful. This submission was also rejected by the House of Lords. Lord Griffiths held as follows (at pp. 699H-701A):

"It is a feature of the very limited power of arrest contained in section 14 that a member of the armed forces does not have to tell the arrested person the offence of which he is suspected, for it is specifically provided by section 14(2) that it is sufficient if he states that he is effecting the arrest as a member of Her Majesty's forces.

Corporal D. was carrying out this arrest in accordance with the procedures in which she had been instructed to make a house arrest pursuant to section 14. This procedure appears to me to be designed to make the arrest with the least risk of injury to those involved including both the soldiers and the occupants of the house. When arrests are made on suspicion of involvement with the IRA it would be to close one's eyes to the obvious not to appreciate the risk that the arrest may be forcibly resisted.

The drill the Army follow is to enter the house and search every room for occupants. The occupants are all directed to assemble in one room, and when the person the soldiers have come to arrest has been identified and is ready to leave, the formal words of arrest are spoken just before they leave the house. The Army do not carry out a search for property in the house and, in my view, they would not be justified in doing so. The power of search is given 'for the purpose of arresting a person', not for a search for incriminating evidence. It is however a proper exercise of the power of search for the purpose of effecting the arrest to search every room for other occupants of the house in case there may be those there who are disposed to resist the arrest. The search cannot be limited solely to looking for the person to be arrested and must also embrace a search whose object is to secure that the arrest should be peaceable. I also regard it as an entirely reasonable precaution that all the occupants of the house should be asked to assemble in one room. As Corporal D. explained in evidence, this procedure is followed because the soldiers may be distracted by other occupants in the house rushing from one room to another, perhaps in a state of alarm, perhaps for the purpose of raising the alarm and to resist the arrest. In such circumstances a tragic shooting accident might all too easily happen with young, and often relatively inexperienced, armed soldiers operating under conditions of extreme tension. Your Lordships were told that the husband and children either had commenced, or were contemplating commencing, actions for false imprisonment arising out of the fact that they were asked to assemble in the living-room for a short period before the plaintiff was taken from the house. That very short period of restraint when they were asked to assemble in the living room was a proper and necessary part of the procedure for effecting the peaceable arrest of the plaintiff. It was a temporary restraint of very short duration imposed not only for the benefit of those effecting the arrest, but also for the protection of the occupants of the house and would be wholly insufficient to found an action for unlawful imprisonment.

It was in my opinion entirely reasonable to delay speaking the words of arrest until the party was about to leave the house. If words of arrest are spoken as soon as the house is entered before any precautions have been taken to search the house and find the other occupants, it seems to me that there is a real risk that the alarm may be raised and an attempt made to resist arrest, not only by those within the house but also by summoning assistance from those in the immediate neighbourhood. When soldiers are employed on the difficult and potentially dangerous task of carrying out a house arrest of a person suspected of an offence in connection with the IRA, it is I think essential that they should have been trained in the drill they are to follow. It would be impracticable and I think potentially dangerous to leave it to the individual discretion of the particular soldier making the arrest to devise his own procedures for carrying out this unfamiliar military function. It is in everyone's best interest that the arrest is peaceably effected and I am satisfied that the procedures adopted by the Army are sensible, reasonable and designed to bring about the arrest with the minimum of danger and distress to all concerned. I would however add this rider: that if the suspect, for any reason, refuses to accept the fact of restraint in the house he should be informed forthwith that he is under arrest."

34. Before the House of Lords the first applicant also pursued a claim that her period of detention exceeded what was reasonably required to make a decision whether to release her or hand her over to the police. In this regard the applicant complained that the standard record form (the "screening proforma") constituted an improper basis for questioning a suspect on the ground that it asked questions not directly relevant to the suspected offence; it was also suggested that the evidence did not show that the questioning of the applicant was directed to the matters of which she was suspected. The allegation was unanimously rejected by the House of Lords. Lord Griffiths observed as follows (at pp. 703F-704C):

"The member of the forces who carried out the interrogation between 8.20 and 9.35 a.m. was not called as a witness on behalf of the Ministry of Defence. There may have been sound reasons for this decision associated with preserving the confidentiality of interrogating techniques and the identity of the interviewer, but be that as it may, the only evidence of what took place at the interview came from Corporal D. and the [first applicant] and it is submitted that this evidence is insufficient to establish that the interview was directed towards an attempt to investigate the suspicion upon which the [applicant] was arrested. Corporal D. was present at that interview, she was not paying close attention but she gave evidence that she remembered questions about money which were obviously directed towards the offences of which the [applicant] was suspected. The [applicant] also said she was questioned about her brothers.

The judge also had before him a questionnaire that was completed by the interviewer. ... There is nothing in the questionnaire which the Army may not reasonably ask the suspect together with such particular questions as are appropriate to the particular case ..."

The conclusion of the trial judge that the applicant had not been asked unnecessary or unreasonable questions and the conclusion of the Court of Appeal that the interviewer had attempted to pursue with the applicant the suspicion which had been the occasion of the arrest, but had been unable to make any headway, were held by the House of Lords to be justified on the evidence.

II. Relevant domestic law and practice

A. Introduction

35. For more than twenty years the population of Northern Ireland, which totals about one and a half million people, has been subjected to a campaign of terrorism. During that time thousands of persons in Northern Ireland have been killed, maimed or injured. The campaign of terror has extended to the rest of the United Kingdom and to the mainland of Europe.

The 1978 Act forms part of the special legislation enacted over the years in an attempt to enable the security forces to deal effectively with the threat of terrorist violence.

B. Entry and search; arrest and detention

36. The first applicant was arrested under section 14 of the 1978 Act, which at the relevant time provided as follows:

"(1) A member of Her Majesty's forces on duty may arrest without warrant, and detain for not more than four hours, a person whom he suspects of committing, having committed or being about to commit any offence.

(2) A person effecting an arrest under this section complies with any rule of law requiring him to state the ground of arrest if he states that he is effecting the arrest as a member of Her Majesty's forces.

(3) For the purpose of arresting a person under this section a member of Her Majesty's forces may enter and search any premises or other place -

(a) where that person is, or

(b) if that person is suspected of being a terrorist or of having committed an offence involving the use or possession of an explosive, explosive substance or firearm, where that person is suspected of being."

A similar provision had been in force since 1973 and had been considered necessary to deal with terrorist activities in two independent reviews (Report of the Diplock Commission 1972 which recommended such a power and a Committee chaired by Lord Gardiner 1974/1975).

37. In 1983 Sir George Baker, a retired senior member of the judiciary, was invited by the Government to review the operation of the 1978 Act in order to determine whether its provisions struck the right balance between the need, on the one hand, to maintain as fully as possible the liberties of the individual and, on the other, to provide the security forces and the courts with adequate powers to enable them to protect the public from current and foreseeable incidence of terrorist crime. In the resultant report specific consideration was given to, inter alia, including a requirement in section 14 of the 1978 Act that an arrest should be based upon reasonable suspicion. While expressly recognising the risk that the facts raising the suspicion might come from a confidential source which could not be disclosed in court in a civil action for wrongful arrest, Sir George Baker concluded that the inclusion of a requirement of reasonableness would not in fact make any difference to the actions of the military and recommended an amendment to the 1978 Act accordingly. That recommendation was implemented in June 1987.

38. The scope and exercise of the section 14 powers were considered by the domestic courts in the proceedings in the present case. The applicable law, as stated by the judgments in these proceedings, is that when the legality of an arrest or detention under section 14 is challenged (whether by way of habeas corpus or in proceedings for damages for wrongful arrest or false imprisonment), the burden lies on the military to justify their acts and, in particular, to establish the following elements:

(a) compliance with the formal requirements for arrest;

(b) the genuineness of the suspicion on which the arrest was based;

(c) that the powers of arrest and detention were not used for any improper purpose such as intelligence-gathering;

(d) that the power of search was used only to facilitate the arrest and not for the obtaining of incriminating evidence;

(e) that those responsible for the arrest and detention did not exceed the time reasonably required to reach a decision whether to release the detainee or hand him over to the police.

C. Photograph

39. Section 11 of the 1978 Act, which concerns police arrest, provides in paragraph 4:

"Where a person is arrested under this section, an officer of the Royal Ulster Constabulary not below the rank of chief inspector may order him to be photographed and to have his finger and palm prints taken by a constable, and a constable may use such reasonable force as may be necessary for that purpose."

40. In the general law of Northern Ireland, as in English law, it is lawful to take a photograph of a person without his or her consent, provided no force is used and the photograph is not exploited in such a way as to defame the person concerned (see paragraphs 26 and 30 in fine above).

The common-law rule entitling the Army to take a photograph equally provides the legal basis for its retention.

D. Standard record form

41. As was confirmed in particular by the Court of Appeal and the House of Lords in the present case, the standard record form (known as the "screening proforma") was an integral part of the examination of the first applicant following her arrest, and the legal authority for recording certain personal details about her in the form derived from the lawfulness of her arrest, detention and examination under section 14 of the 1978 Act (see paragraph 30, first sub-paragraph in fine, and paragraph 34 above). The implied lawful authority conferred by section 14 of the 1978 Act to record information about the first applicant equally provided the legal basis for the retention of the information.

PROCEEDINGS BEFORE THE COMMISSION

42. The applicants applied to the Commission on 28 September 1988 (application no. 14310/88).

The first applicant complained that her arrest and detention for two hours for questioning gave rise to a violation of Article 5 paras. 1 and 2 (art. 5-1, art. 5-2), for which she had no enforceable right to compensation as guaranteed by Article 5 para. 5 (art. 5-5); and that the taking and keeping of a photograph and personal details about her was in breach of her right to respect for private life under Article 8 (art. 8).

The other five applicants alleged a violation of Article 5 paras. 1, 2 and 5 (art. 5-1, art. 5-2, art. 5-5) as a result of being required to assemble for half an hour in one room of their house while the first applicant prepared to leave with the Army. They further argued that the recording and retention of certain personal details about them, such as their names and relationship to the first applicant, violated their right to respect for private life under Article 8 (art. 8).

All six applicants claimed that the entry into and search of their home by the Army were contrary to their right to respect for their private and family life and their home under Article 8 (art. 8) of the Convention; and that, contrary to Article 13 (art. 13), no effective remedies existed under domestic law in respect of their foregoing complaints under the Convention.

The applicants also made complaints under Article 3 and Article 5 para. 3 (art. 3, art. 5-3), which they withdrew subsequently on 11 April 1990.

43. On 10 December 1991 the Commission declared admissible all the first applicant's complaints and the other applicants' complaint under Article 8 (art. 8) in connection with the entry into and search of the family home. The remainder of the application was declared inadmissible.

44. In its report of 17 February 1993 (Article 31) (art. 31) the Commission expressed the opinion that

(a) in the case of the first applicant, there had been a violation of Article 5 para. 1 (art. 5-1) (eleven votes to three), Article 5 para. 2 (art. 5-2) (ten votes to four) and Article 5 para. 5 (art. 5-5) (eleven votes to three);

(b) there had been no violation of Article 8 (art. 8) (thirteen votes to one);

(c) it was not necessary to examine further the first applicant's complaint under Article 13 (art. 13) concerning remedies for arrest, detention and the lack of information about the reasons for arrest;

(d) in the case of the first applicant, there had been no violation of Article 13 (art. 13) in relation to either the entry into and search of her home (unanimously) or the taking and keeping of a photograph and personal details about her (ten votes to four).

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

_____ * Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 300-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry. _____

FINAL SUBMISSIONS TO THE COURT

45. At the public hearing on 24 January 1994 the Government maintained in substance the concluding submission set out in their memorial, whereby they invited the Court to hold

"(1) that there has been no violation of Article 5 paras. 1, 2 or 5 (art. 5-1, art. 5-2, art. 5-5) of the Convention in the case of the [first] applicant;

(2) that there has been no violation of Article 8 (art. 8) of the Convention in the case of the [first] applicant or in the cases of the other applicants;

(3) that there has been no violation of Article 13 (art. 13) of the Convention in relation to the [first] applicant's complaints concerning entry and search of her home and concerning the taking and retention of a photograph and personal details;

(4) that there has been no violation of Article 13 (art. 13) of the Convention in relation to the [first] applicant's complaints concerning her arrest; alternatively, if a violation of Article 5 para. 5 (art. 5-5) is found, that no separate issue arises under Article 13 (art. 13) of the Convention".

46. On the same occasion the applicants likewise maintained in substance the conclusions and requests formulated at the close of their memorial, whereby they requested the Court

"to decide and declare:

(1) that the facts disclose breaches of paragraphs 1, 2 and 5 of Article 5 (art. 5-1, art. 5-2, art. 5-5) of the Convention;

(2) that the facts disclose a breach of Article 8 (art. 8) of the Convention;

(3) that the facts disclose a breach of Article 13 (art. 13) of the Convention".

AS TO THE LAW

I. GENERAL APPROACH

47. The applicants' complaints concern the first applicant's arrest and detention by the Army under special criminal legislation enacted to deal with acts of terrorism connected with the affairs of Northern Ireland. As has been noted in several previous judgments by the Court, the campaign of terrorism waged in Northern Ireland over the last quarter of a century has taken a terrible toll, especially in terms of human life and suffering (see paragraph 35 above).

The Court sees no reason to depart from the general approach it has adopted in previous cases of a similar nature. Accordingly, for the purposes of interpreting and applying the relevant provisions of the Convention, due account will be taken of the special nature of terrorist crime, the threat it poses to democratic society and the exigencies of dealing with it (see, inter alia, the Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182, p. 15, para. 28, citing the Brogan and Others v. the United Kingdom judgment of 29 November 1988, Series A no. 145-B, p. 27, para. 48).

II. ALLEGED VIOLATION OF ARTICLE 5 PARA. 1 (art. 5-1) OF THE CONVENTION

48. The first applicant, Mrs Margaret Murray, alleged that her arrest and detention by the Army were in breach of Article 5 para. 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 ...

..."

A. Lawfulness

49. Before the Convention institutions the first applicant did not dispute that her arrest and detention were "lawful" under Northern Ireland law and, in particular, "in accordance with a procedure prescribed by law", as required by Article 5 para. 1 (art. 5-1). She submitted that she had not been arrested on "reasonable suspicion" of having committed a criminal offence and that the purpose of her arrest and subsequent detention had not been to bring her before a competent legal authority within the meaning of paragraph 1 (c) (art. 5-1-c).

B. "Reasonable suspicion"

50. Mrs Murray was arrested and detained by virtue of section 14 of the 1978 Act (see paragraphs 11 and 12 above). This provision, as construed by the domestic courts, empowered the Army to arrest and detain persons suspected of the commission of an offence provided, inter alia, that the suspicion of the arresting officer was honestly and genuinely held (see paragraphs 36 and 38(b) above). It is relevant but not decisive that the domestic legislation at the time merely imposed this essentially subjective standard: the Court's task is to determine whether the objective standard of "reasonable suspicion" laid down in Article 5 para. 1 (art. 5-1) was met in the circumstances of the application of the legislation in the particular case.

51. In its judgment in the above-mentioned case of Fox, Campbell and Hartley, which was concerned with arrests carried out by the Northern Ireland police under a similarly worded provision of the 1978 Act, the Court stated as follows (pp. 16-18, paras. 32 and 34):

"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 para. 1 (c) (art. 5-1-c). ... [H]aving 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.

... [I]n 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 para. 1 (c) (art. 5-1-c) is impaired ...

...

Certainly Article 5 para. 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 ... . 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 para. 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."

On the facts the Court found in that case that, although the arrest and detention of the three applicants, which lasted respectively forty-four hours, forty-four hours and five minutes and thirty hours and fifteen minutes, were based on an honest suspicion, insufficient elements had been furnished by the Government to support the conclusion that there had been a "reasonable suspicion" for the purposes of sub-paragraph (c) of Article 5 para. 1 (art. 5-1-c) (ibid., p. 18, para. 35).

52. In the present case the Government maintained that there existed strong and specific grounds, founded on information from a reliable but secret source, for the Army to suspect that Mrs Murray was involved in the collection of funds for terrorist purposes. However, the "primary" information so provided could not be revealed in the interests of protecting lives and personal safety. In the Government's submission, the fact that they had maintained that this was the foundation of the suspicion should be given considerable weight by the Court. They also pointed to a number of other facts capable of supporting, albeit indirectly, the reasonableness of the suspicion, including notably the findings made by the domestic courts in the proceedings brought by Mrs Murray, the very recent conviction of her brothers in the USA of offences connected with the purchase of weapons for the Provisional IRA, her own visits to the USA and her contacts with her brothers there (see especially paragraphs 10, 19, 24, 25, 28 and 29 above). They submitted that all these matters taken together provided sufficient facts and information to satisfy an objective observer that there was a reasonable suspicion in the circumstances of the case. Any other conclusion by the Court would, they feared, prohibit arresting authorities from effecting an arrest of a person suspected of being a terrorist based primarily on reliable but secret information and would inhibit the arresting authorities in taking effective measures to counter organised terrorism.

53. The first applicant, on the other hand, considered that the Government had failed to discharge the onus of disclosing sufficient facts to enable the Convention institutions to conclude that the suspicion grounding her arrest was reasonable or anything more than the "honest" suspicion required under Northern Ireland law. As in the case of Fox, Campbell and Hartley, the Government's explanation did not meet the minimum standards set by Article 5 para. 1 (c) (art. 5-1-c) for judging the reasonableness of her arrest and detention. She did not accept that the reason advanced for non-disclosure was

a genuine or valid one. She in her turn pointed to circumstances said to cast doubt on the reasonableness of the suspicion. Thus, had the suspicion really been reasonable, she would not have been arrested under the four-hour power granted by section 14 of the 1978 Act but under more extensive powers; she would have been questioned by the police, not the Army; time would not have been spent in gathering personal details and in photographing her; she would have been questioned for more than one hour and fifteen minutes; she would have been questioned about her own alleged involvement and not just about her brothers in the USA; and she would have been cautioned. In reply to the Government the first applicant contended that the issue which the domestic courts inquired into was not the objective reasonableness of any suspicion but the subjective state of mind of the arresting officer, Corporal D.

54. For the Commission, the Government's explanation in the present case was not materially distinguishable from that provided in the case of Fox, Campbell and Hartley. It took the view that no objective evidence to corroborate the unrevealed information had been adduced in support of the suspicion that the first applicant had been involved in collecting money for Provisional IRA arms purchases other than her kinship with her convicted brothers. That, the Commission concluded, was insufficient to satisfy the minimum standard set by Article 5 para. 1 (c) (art. 5-1-c).

55. With regard to the level of "suspicion", the Court would note firstly that, as was observed in its judgment in the case of Brogan and Others, "sub-paragraph (c) of Article 5 para. 1 (art. 5-1-c) does not presuppose that the [investigating authorities] should have obtained sufficient evidence to bring charges, either at the point of arrest or while [the arrested person is] in custody. Such evidence may have been unobtainable or, in view of the nature of the suspected offences, impossible to produce in court without endangering the lives of others" (loc. cit., p. 29, para. 53). The object of questioning during detention under sub-paragraph (c) of Article 5 para. 1 (art. 5-1-c) is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation.

56. The length of the deprivation of liberty at risk may also be material to the level of suspicion required. The period of detention permitted under the provision by virtue of which Mrs Murray was arrested, namely section 14 of the 1978 Act, was limited to a maximum of four hours.

57. With particular regard to the "reasonableness" of the suspicion, the principles stated in the Fox, Campbell and Hartley judgment are to be applied in the present case, although as pointed out in that judgment, the existence or not of a reasonable suspicion in a concrete instance depends ultimately on the particular facts.

58. The Court would firstly reiterate its recognition that the use of confidential information is essential in combating terrorist violence and the threat that organised terrorism poses to the lives of citizens and to democratic society as a whole (see also the Klass and Others v. Germany judgment of 6 September 1978, Series A no. 28, p. 23, para. 48). This does not mean, however, that the investigating authorities have carte blanche under Article 5 (art. 5) to arrest suspects for questioning, free from effective control by the domestic courts or by the Convention supervisory institutions, whenever they choose to assert that terrorism is involved (ibid., p. 23, para. 49).

59. As to the present case, the terrorist campaign in Northern Ireland, the carnage it has caused over the years and the active engagement of the Provisional IRA in that

campaign are established beyond doubt. The Court also accepts that the power of arrest granted to the Army by section 14 of the 1978 Act represented a bona fide attempt by a democratically elected parliament to deal with terrorist crime under the rule of law. That finding is not altered by the fact that the terms of the applicable legislation were amended in 1987 as a result of the Baker Report so as to include a requirement that the arrest should be based on reasonable, rather than merely honest, suspicion (see paragraph 37 above).

The Court is accordingly prepared to attach some credence to the respondent Government's declaration concerning the existence of reliable but confidential information grounding the suspicion against Mrs Murray.

60. Nevertheless, in the words of the Fox, Campbell and Hartley judgment, the respondent Government must in addition "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" (see paragraph 51 above). In this connection, unlike in the case of Fox, Campbell and Hartley, the Convention institutions have had the benefit of the review that the national courts conducted of the facts and of Mrs Murray's allegations in the civil proceedings brought by her.

61. It cannot be excluded that all or some of the evidence adduced before the national courts in relation to the genuineness of the suspicion on the basis of which Mrs Murray was arrested may also be material to the issue whether the suspicion was "reasonable" for the purposes of Article 5 para. 1 (c) (art. 5-1-c) of the Convention. At the very least the honesty and bona fides of a suspicion constitute one indispensable element of its reasonableness.

In the action brought by Mrs Murray against the Ministry of Defence for false imprisonment and other torts, the High Court judge, after having heard the witnesses and assessed their credibility, found that she had genuinely been suspected of having been involved in the collection of funds for the purchase of arms in the USA for the Provisional IRA (see paragraph 24 above). The judge believed the evidence of the arresting officer, Corporal D, who was described as a "transparently honest witness", as to what she had been told at her briefing before the arrest (see paragraphs 11 and 24 above). Likewise as found by the judge, although the interview at the Army centre was later in time than the arrest, the line of questioning pursued by the interviewer also tends to support the conclusion that Mrs Murray herself was suspected of the commission of a specific criminal offence (see paragraphs 14 and 25 above).

62. Some weeks before her arrest two of Mrs Murray's brothers had been convicted in the USA of offences connected with purchase of arms for the Provisional IRA (see paragraph 10 above). As she disclosed in her evidence to the High Court, she had visited the USA and had contacts with her brothers there (see paragraph 19 above). The offences of which her brothers were convicted were ones that implied collaboration with "trustworthy" persons residing in Northern Ireland.

63. Having regard to the level of factual justification required at the stage of suspicion and to the special exigencies of investigating terrorist crime, the Court finds, in the light of all the above considerations, that there did exist sufficient facts or information which would provide a plausible and objective basis for a suspicion that Mrs Murray may have committed the offence of involvement in the collection of funds for the Provisional IRA. On the particular facts of the present case, therefore, the Court is satisfied that, notwithstanding the lower standard of suspicion under domestic law, Mrs Murray can be

said to have been arrested and detained on "reasonable suspicion" of the commission of a criminal offence, within the meaning of sub-paragraph (c) of Article 5 para. 1 (art. 5-1-c).

C. Purpose of the arrest

64. In the first applicant's submission, it was clear from the surrounding circumstances that she was not arrested for the purpose of bringing her before a "competent legal authority" but merely for the purpose of interrogating her with a view to gathering general intelligence. She referred to the entries made in her regard on the standard record form completed at the Army centre (see paragraph 15 above), to the failure of the Army to involve the police in her questioning and to the short (one-hour) period of her questioning (see paragraph 14 above).

The Government disputed this contention, pointing to the fact that it was a claim expressly raised by Mrs Murray in the domestic proceedings and rejected by the trial judge on the basis of evidence which had been tested by cross-examination of witnesses.

The Commission in its report did not find it necessary to examine this complaint in view of its conclusion as to the lack of "reasonable suspicion" for the arrest and detention.

65. Under the applicable law of Northern Ireland the power of arrest and detention granted to the Army under section 14 of the 1978 Act may not be used for any improper purpose such as intelligence-gathering (see paragraph 38(c) above). In the civil action brought by Mrs Murray against the Ministry of Defence the trial court judge found that on the evidence before him the purpose of her arrest and detention under section 14 of the 1978 Act had been to establish facts concerning the offence of which she was suspected (see paragraph 25 above). In reaching this conclusion the trial judge had had the benefit of seeing the various witnesses give their evidence and of evaluating their credibility. He accepted the evidence of Corporal D. and Sergeant B. as being truthful and rejected the claims of Mrs Murray, in particular her contention that she had been told by Sergeant B. that she was not suspected of any offence and had been arrested merely in order to bring her file up to date (see paragraphs 19, 20 to 22, 24 and 25 above). The Court of Appeal, after reviewing the evidence, in turn rejected her argument that the purpose of her arrest and detention had been a "fishing expedition" designed to obtain low-grade intelligence (see paragraph 29 above). This argument was not pursued before the House of Lords (see paragraph 32 above).

66. The Court's task is to determine whether the conditions laid down by paragraph (c) of Article 5 para. 1 (art. 5-1-c), including the pursuit of the prescribed legitimate purpose, have been fulfilled in the circumstances of the particular case. However, in this context it is not normally within the province of the Court to substitute its own finding of fact for that of the domestic courts, which are better placed to assess the evidence adduced before them (see, among other authorities, the X v. the United Kingdom judgment of 5 November 1981, Series A no. 46, pp. 19-20, para. 43, in relation to Article 5 para. 1 (e) (art. 5-1-e); and the Klaas v. Germany judgment of 22 September 1993, Series A no. 269, p. 17, para. 29, in relation to Article 3 (art. 3)). In the present case no cogent elements have been produced by the first applicant in the proceedings before the Convention institutions which could lead the Court to depart from the findings of fact made by the Northern Ireland courts.

67. Mrs Murray was neither charged nor brought before a court but was released after an interview lasting a little longer than one hour (see paragraph 14 above). This does not necessarily mean, however, that the purpose of her arrest and detention was not in accordance with Article 5 para. 1 (c) (art. 5-1-c) since "the existence of such a purpose must be considered independently of its achievement" (see the above-mentioned Brogan and Others judgment, pp. 29-30, para. 53). As the domestic courts pointed out (see

paragraphs 25 in fine, 29 in fine and 34 in fine above), in view of her persistent refusal to answer any questions at the Army centre (see paragraphs 13, 14 and 19 above) it is not surprising that the authorities were not able to make any headway in pursuing the suspicions against her. It can be assumed that, had these suspicions been confirmed, charges would have been laid and she would have been brought before the competent legal authority.

68. The first applicant also alleged absence of the required proper purpose by reason of the fact that in practice persons arrested by the Army under section 14 were never brought before a competent legal authority by the Army but, if the suspicions were confirmed during questioning, were handed over to the police who preferred charges and took the necessary action to bring the person before a court.

The Court sees little merit in this argument. What counts for the purpose of compliance with Convention obligations is the substance rather than the form. Provided that the purpose of the arrest and detention is genuinely to bring the person before the competent legal authority, the mechanics of how this is to be achieved will not be decisive.

69. The arrest and detention of the first applicant must therefore be taken to have been effected for the purpose specified in paragraph 1 (c) (art. 5-1-c).

D. Conclusion

70. In conclusion, there has been no violation of Article 5 para. 1 (art. 5-1) in respect of the first applicant.

III. ALLEGED VIOLATION OF ARTICLE 5 PARA. 2 (art. 5-2) OF THE CONVENTION

71. The first applicant also alleged a violation of Article 5 para. 2 (art. 5-2) of the Convention, which provides:

"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."

72. The relevant principles governing the interpretation and application of Article 5 para. 2 (art. 5-2) in cases such as the present one were explained by the Court in its Fox, Campbell and Hartley judgment as follows (loc. cit., p. 19, para. 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)... . 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."

In that case the Court found on the facts that the reasons for the applicants' arrest had been brought to their attention during their interrogation within a few hours of their arrest. This being so, the requirements of Article 5 para. 2 (art. 5-2) were held to have been satisfied in the circumstances (ibid., pp. 19-20, paras. 41-43).

73. The first applicant maintained that at no time during her arrest or detention had she been given any or sufficient information as to the grounds of her arrest. Although she had realised that the Army was interested in her brothers' activities, she had not, she

claimed, understood from the interview at the Army centre that she herself was suspected of involvement in fund-raising for the Provisional IRA. The only direct information she was given was the formal formula of arrest pronounced by Corporal D.

74. The Commission similarly took the view that it was impossible to draw any conclusions from what it described as the vague indications given by Corporal D. in evidence before the High Court as to whether the first applicant had been able to understand from the interview why she had been arrested. In the Commission's opinion, it had not been shown that the questions asked of Mrs Murray during her interview were sufficiently precise to constitute the information as to the reasons for arrest required by Article 5 para. 2 (art. 5-2).

75. According to the Government, on the other hand, it was apparent from the trial evidence that in the interview it was made clear to Mrs Murray that she was suspected of the offence of collecting money for the Provisional IRA. The Government did not accept the Commission's conclusion on the facts, which was at variance with the findings of the domestic courts. They considered it established that Mrs Murray had been given sufficient information as to the grounds of her arrest. In the alternative, even if insufficient information had been given to her to avail herself of her right under Article 5 para. 4 (art. 5-4) of the Convention to take legal proceedings to test the lawfulness of her detention, she had suffered no prejudice thereby which would give rise to a breach of Article 5 para. 2 (art. 5-2) since she had been released rapidly, before any determination of the lawfulness of her detention could have taken place.

76. It is common ground that, apart from repeating the formal words of arrest required by law, the arresting officer, Corporal D., also told Mrs Murray the section of the 1978 Act under which the arrest was being carried out (see paragraphs 12 and 36 above). This bare indication of the legal basis for the arrest, taken on its own, is insufficient for the purposes of Article 5 para. 2 (art. 5-2) (see the above-mentioned Fox, Campbell and Hartley judgment, p. 19, para. 41).

77. During the trial of Mrs Murray's action against the Ministry of Defence, evidence as to the interview at the Army centre was given by Mrs Murray and Corporal D., but not by the soldier who had conducted the interview (see paragraphs 14, 19 and 21 above). Mrs Murray testified that she had been questioned about her brothers in the USA and about her contacts with them but not about the purchase of arms for the Provisional IRA or about any offence (see paragraph 19 above). Corporal D. did not have a precise recollection as to the content of the questions put to Mrs Murray. This is not perhaps surprising since the trial took place over three years after the events - Mrs Murray having waited eighteen months before bringing her action - and Corporal D., although present, had not taken an active part in the interview (see paragraphs 14, 16, 17 and 21 above). Corporal D. did however remember that questions had been asked about money and about America and the trial judge found her to be a "transparently honest witness" (see paragraphs 21 and 24 above). Shortly before the arrest two of Mrs Murray's brothers had, presumably to the knowledge of all concerned in the interview, been convicted in the USA of offences connected with the purchase of weapons for the Provisional IRA (see paragraph 10 above).

In the Court's view, it must have been apparent to Mrs Murray that she was being questioned about her possible involvement in the collection of funds for the purchase of arms for the Provisional IRA by her brothers in the USA. Admittedly, "there was never any probing examination of her collecting money" - to use the words of the trial judge - but, as the national courts noted, this was because of Mrs Murray's declining to answer any questions at all beyond giving her name (see paragraphs 14, 23, 25, 29 and 34 in fine

above). The Court therefore finds that the reasons for her arrest were sufficiently brought to her attention during her interview.

78. Mrs Murray was arrested at her home at 7 a.m. and interviewed at the Army centre between 8.20 a.m. and 9.35 a.m. on the same day (see paragraphs 12 and 14 above). In the context of the present case this interval cannot be regarded as falling outside the constraints of time imposed by the notion of promptness in Article 5 para. 2 (art. 5-2).

79. In view of the foregoing findings it is not necessary for the Court to examine the Government's alternative submission.

80. In conclusion, there was no breach of Article 5 para. 2 (art. 5-2) in respect of the first applicant.

IV. ALLEGED VIOLATION OF ARTICLE 5 PARA. 5 (art. 5-5) OF THE CONVENTION

81. The first applicant finally alleged in relation to Article 5 a violation of paragraph 5 (art. 5-5) of the Convention, which reads:

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

This claim was accepted by the Commission but disputed by the Government. The Commission concluded that there was no enforceable right under Northern Ireland law for the breaches of Article 5 paras. 1 and 2 (art. 5-1, art. 5-2) which it considered to have occurred.

82. As the Court has found no violation of Article 5 paras. 1 or 2 (art. 5-1, art. 5-2), no issue arises under Article 5 para. 5 (art. 5-5). There has accordingly been no violation of this latter provision in the present case.

V. ALLEGED VIOLATION OF ARTICLE 8 (art. 8) OF THE CONVENTION

83. All six applicants claimed to be the victims of a violation of Article 8 (art. 8) of the Convention, which provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Arguments before the Court

84. The first applicant complained of the manner in which she was treated both in her home and at the Army centre; in the latter connection she objected to the recording of personal details concerning herself and her family, as well as the photograph which was taken of her without her knowledge or consent (see paragraphs 12 to 15 above). All six applicants contended that the entry into and search of their family home by the Army, including the confinement of the second, third, fourth, fifth and sixth applicants for a short while in one room, violated Article 8 (art. 8) (see paragraph 12 above).

85. Both the Government and the Commission considered that the matters complained of were justified under paragraph 2 of Article 8 (art. 8-2) as being lawful measures necessary in a democratic society for the prevention of crime in the context of the fight against terrorism in Northern Ireland.

B. Interference

86. It was not contested that the impugned measures interfered with the applicants' exercise of their right to respect for their private and family life and their home.

C. "In accordance with the law"

87. On the other hand, the applicants did not concede that the resultant interferences had been "in accordance with the law". They disputed that the impugned measures all formed an integral part of Mrs Murray's arrest and detention or that the domestic courts had affirmed their lawfulness, in particular as concerns the retention of the records including the photograph of Mrs Murray.

88. Entry into and search of a home by Army personnel such as occurred in the present case were explicitly permitted by section 14 (3) of the 1978 Act for the purpose of effecting arrests under that section (see paragraphs 36 and 38(d) above). The Court of Appeal upheld the legality of the search in the present case (see paragraph 30 above). The short period of restraint endured by the other members of Mrs Murray's family when they were asked to assemble in one room was held by the House of Lords to be a necessary and proper part of the procedure of arrest of Mrs Murray (see paragraph 33 above). The Court of Appeal and the House of Lords also confirmed that the Army's implied lawful authority under section 14 extended to interrogating a detained person and to recording personal details of the kind contained in the standard record form (see paragraph 41 above and also paragraphs 15, 30 and 34). It is implicit in the judgments of the national courts that the retention of such details was covered by the same lawful authority derived from section 14 (see paragraph 41 in fine above). The taking and, by implication, also the retention of a photograph of the first applicant without her consent had no statutory basis but, as explained by the trial court judge and the Court of Appeal, were lawful under the common law (see paragraphs 26, 30, 39 and 40 above).

The impugned measures thus had a basis in domestic law. The Court discerns no reason, on the material before it, for not concluding that each of the various measures was "in accordance with the law", within the meaning of Article 8 para. 2 (art. 8-2).

D. Legitimate aim

89. These measures undoubtedly pursued the legitimate aim of the prevention of crime.

E. Necessity in a democratic society

90. It remains to be determined whether they were necessary in a democratic society and, in particular, whether the means employed were proportionate to the legitimate aim pursued. In this connection it is not for the Court to substitute for the assessment of the national authorities its own assessment of what might be the best policy in the field of investigation of terrorist crime (see the above-mentioned Klass and Others judgment, p. 23, para. 49). A certain margin of appreciation in deciding what measures to take both in general and in particular cases should be left to the national authorities.

91. The present judgment has already adverted to the responsibility of an elected government in a democratic society to protect its citizens and its institutions against the threats posed by organised terrorism and to the special problems involved in the arrest and detention of persons suspected of terrorist-linked offences (see paragraphs 47, 51 and 58 above). These two factors affect the fair balance that is to be struck between the exercise by the individual of the right guaranteed to him or her under paragraph 1 of Article 8 (art. 8-1) and the necessity under paragraph 2 (art. 8-2) for the State to take effective measures for the prevention of terrorist crimes (see, mutatis mutandis, the above-mentioned Klass and Others judgment, p. 28, para. 59).

92. The domestic courts held that Mrs Murray was genuinely and honestly suspected of the commission of a terrorist-linked crime (see paragraphs 24 and 28 above). The European Court, for its part, has found on the evidence before it that this suspicion could be regarded as reasonable for the purposes of sub-paragraph (c) Article 5 para. 1 (art. 5-1-c) (see paragraph 63 above). The Court accepts that there was in principle a need both for powers of the kind granted by section 14 of the 1978 Act and, in the particular case, to enter and search the home of the Murray family in order to arrest Mrs Murray.

Furthermore, the "conditions of extreme tension", as Lord Griffiths put it in his speech in the House of Lords, under which such arrests in Northern Ireland have to be carried out must be recognised. The Court notes the analysis of Lord Griffiths, when he said (see paragraph 33 above):

"The search cannot be limited solely to looking for the person to be arrested and must also embrace a search whose object is to secure that the arrest should be peaceable. I ... regard it as an entirely reasonable precaution that all the occupants of the house should be asked to assemble in one room. ... It is in everyone's best interest that the arrest is peaceably effected and I am satisfied that the procedures adopted by the Army are sensible, reasonable and designed to bring about the arrest with the minimum of danger and distress to all concerned."

These are legitimate considerations which go to explain and justify the manner in which the entry into and search of the applicants' home were carried out. The Court does not find that, in relation to any of the applicants, the means employed by the authorities in this regard were disproportionate to the aim pursued.

93. Neither can it be regarded as falling outside the legitimate bounds of the process of investigation of terrorist crime for the competent authorities to record and retain basic personal details concerning the arrested person or even other persons present at the time and place of arrest. None of the personal details taken during the search of the family home or during Mrs Murray's stay at the Army centre would appear to have been irrelevant to the procedures of arrest and interrogation (see paragraphs 12 to 15 above). Similar conclusions apply to the taking and retention of a photograph of Mrs Murray at the Army centre (see paragraphs 13 and 14 above). In this connection too, the Court does not find that the means employed were disproportionate to the aim pursued.

94. In the light of the particular facts of the case, the Court finds that the various measures complained of can be regarded as having been necessary in a democratic society for the prevention of crime, within the meaning of Article 8 para. 2 (art. 8-2).

F. Conclusion

95. In conclusion there has been no violation of Article 8 (art. 8) in respect of any of the applicants.

VI. ALLEGED VIOLATION OF ARTICLE 13 (art. 13) OF THE CONVENTION

96. The first applicant submitted that, contrary to Article 13 (art. 13) of the Convention, she had no effective remedy under domestic law in respect of her claims under Articles 5 and 8 (art. 5, art. 8). Article 13 (art. 13) reads as follows:

"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."

A. Claims as to arrest, detention and lack of information about reasons for arrest (Article 5 paras. 1 and 2) (art. 5-1, art. 5-2)

97. The Commission did not consider it necessary to examine the complaint under this head on the ground that no separate issue arose under Article 13 (art. 13) in view of its conclusion that Article 5 para. 5 (art. 5-5) had been violated.

The Government submitted that, if a breach of Article 5 para. 5 (art. 5-5) were found, the Commission's approach was correct but that, if not, the requirements of Article 13 (art. 13) had been satisfied.

98. Under the Convention scheme of protection of the right to liberty and security of person, the lex specialis as regards entitlement to a remedy is paragraph 4 of Article 5 (art. 5-4) (see the Brannigan and McBride v. the United Kingdom judgment of 26 May 1993, Series A no. 258-B, p. 57, para. 76), 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 scope of this specific entitlement in relation to arrest and detention under the emergency legislation in Northern Ireland has been considered by the Court, notably in the Brogan and Others and Fox, Campbell and Hartley judgments (loc. cit., pp. 34-35, para. 65, and pp. 20-21, para. 45, respectively).

No complaint however was made by the first applicant under Article 5 para. 4 (art. 5-4) at any stage of the proceedings before the Convention institutions. The Court sees no cause, either on the facts or in law, to examine whether the less strict requirements of Article 13 (art. 13) were complied with in the present case.

B. Claims as to entry and search (Article 8) (art. 8)

99. The first applicant argued that effective remedies for her claims under Article 8 (art. 8) regarding the Army's actions in entering and searching her house were lacking since such domestic proceedings as might have been taken in relation to entry and search would have failed because domestic law provided lawful excuse for those actions.

The Commission expressed the opinion that an appropriate remedy did exist under domestic law, notably in the form of an action for the tort of unlawful trespass to property.

The Government accepted and adopted the Commission's reasoning.

100. The Court likewise arrives at the same conclusion as the Commission. Article 13 (art. 13) guarantees the availability of a remedy at national level to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order. Its effect is thus to require the provision of a domestic remedy allowing the competent "national authority" both to deal with the substance of the relevant Convention complaint and to grant appropriate relief in meritorious cases (see, inter alia, the Vilvarajah and Others v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 39, para. 122, and the authorities cited there). The remedy available to Mrs Murray would have satisfied these conditions. As the Commission pointed out, her feeble prospects of success in the light of the particular circumstances of her case do not detract from the "effectiveness" of the remedy for the purpose of Article 13 (art. 13) (ibid.).

C. Claims as to the taking and retention of a photograph and personal details (Article 8) (art. 8)

101. As to her claims under Article 8 (art. 8) regarding the taking and retention of a photograph and personal details, the first applicant agreed with the separate opinion of Sir Basil Hall, who took the view that since Northern Ireland law offered no protection for an individual in her position, there being no general right to privacy recognised under that law, Article 13 (art. 13) had been violated.

The Commission, citing the Court's case-law (see the James and Others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, pp. 47-48, paras. 85-86),

concluded that in so far as the first applicant's complaint was directed against the content of Northern Ireland law, Article 13 (art. 13) did not confer any entitlement to a remedy; and that, if she could be taken to be objecting to the manner in which that law had been applied in her case, she could have brought an action before the Northern Ireland courts.

The Government accepted and adopted the Commission's reasoning.

102. On this point too the Court comes to the same conclusion as the Commission.

Whether the relevant domestic law as applied to Mrs Murray ensured her a sufficient level of protection of her right to respect for her private life is a substantive issue under Article 8 (art. 8). The matters complained of by Mrs Murray under Article 8 (art. 8) in this connection have already been found in the present judgment to have been compatible with the requirements of Article 8 (art. 8) (see paragraphs 83 to 95 above). Article 13 (art. 13) for its part does not go so far as to guarantee Mrs Murray a remedy allowing her to have challenged the content of Northern Ireland law before a national authority (see the James and Others judgment, loc. cit.). For the rest, effective remedies were available to her to raise any claim of non-compliance with the applicable domestic law.

D. Conclusion

103. The facts of the present case do not therefore disclose a violation of Article 13 (art. 13) in respect of the first applicant.

FOR THESE REASONS, THE COURT

1. Holds, by fourteen votes to four, that there has been no breach of Article 5 para. 1 (art. 5-1) of the Convention in respect of the first applicant;

2. Holds, by thirteen votes to five, that there has been no breach of Article 5 para. 2 (art. 5-2) of the Convention in respect of the first applicant;

3. Holds, by thirteen votes to five, that there has been no breach of Article 5 para. 5 (art. 5-5-) of the Convention in respect of the first applicant;

4. Holds, by fifteen votes to three, that there has been no breach of Article 8 (art. 8) of the Convention in respect of any of the applicants;

5. Holds, unanimously, that it is not necessary to examine under Article 13 (art. 13) of the Convention the first applicant's complaint concerning remedies for her claims under Article 5 paras. 1 and 2 (art. 5-1, art. 5-2);

6. Holds, unanimously, that, for the rest, there has been no breach of Article 13 (art. 13) of the Convention in respect of the first applicant.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 October 1994.

Signed: Rolv RYSSDAL President

Signed: Herbert PETZOLD Acting Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of Rules of Court A, the following separate opinions are annexed to this judgment:

(a) joint dissenting opinion of Mr Loizou, Mr Morenilla and Mr Makarczyk;

(b) partly dissenting opinion of Mr Mifsud Bonnici;

(c) partly dissenting opinion of Mr Jambrek.

Initialled: R. R.

Initialled: H. P.

JOINT DISSENTING OPINION OF JUDGES LOIZOU, MORENILLA AND MAKARCZY

k1. Although we agree with the majority of the Court that, when interpreting and applying the Convention, due account should be taken of the special nature of terrorist crime, of the exigencies of investigating terrorist activities and of the necessity of not

jeopardising the confidentiality of reliable sources of information, we cannot concur with its conclusion of no violation of Article 5 paras. 1, 2 and 5 (art. 5-1, art. 5-2, art. 5-5), and Article 8 (art. 8) of the Convention in the present case.

On the contrary, a violation of the applicants' fundamental rights to liberty and security and to respect for private life is disclosed by the circumstances of the case, namely the Army's entry into and search of the applicants' home at 7 a.m. without warrant; the assembling of Mrs Murray's husband and four children in a room of the house during half an hour; her arrest and detention during two hours for questioning in a military screening centre on suspicion of her involvement in terrorist activities because her brothers had been convicted in the United States of America of offences connected with the purchase of arms for the Provisional IRA; and the failure to inform her of the reasons for her arrest (paragraphs 9 to 34 of the judgment).

2. Regarding the arrest and detention of Mrs Murray, we regret that we are not convinced by the majority's arguments, particularly in paragraphs 62 and 63, as to the reasonableness of the suspicion that she had committed the above-mentioned offence; nor do we find that the facts of this case are materially different from those in the Fox, Campbell and Hartley judgment*, where the Court found a violation of Article 5 para. 1 (art. 5-1) because it considered the elements furnished by the Government to be insufficient to support the conclusion that there had been a "reasonable suspicion" that the arrested persons had committed an offence.

_____ * Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182. _____

3. The conviction in the United States of Mrs Murray's two brothers of offences connected with the purchase of weapons for the Provisional IRA, her visit to her brothers there and the reference to the collaboration with "trustworthy" persons residing in Northern Ireland implied by such offences are not, in our opinion, sufficient grounds for reasonably suspecting the first applicant of involvement in the offence of collecting funds in Northern Ireland to buy arms in the United States for terrorist purposes. Family ties cannot imply a criminal relationship between the author of the offence and his or her relatives; nor can the "co-operative" nature of the crime be considered a valid basis for a reasonable suspicion of complicity on the part of members of the family or friends of the criminal. These circumstances may give rise only to a bona fide suspicion of such complicity. They do not give rise to a "reasonable" suspicion such as to justify the serious measures taken against the applicants unless they are connected with other facts in direct relation to the offence. No facts of this kind have however been furnished by the respondent Government, although, in our opinion, they could have been supplied without jeopardising the confidentiality of the source of information which is necessary to protect the life and personal safety of that source (paragraph 52 of the judgment).

4. The Court's task, as stated by the majority (paragraph 66 of the judgment), is to determine whether the conditions laid down by sub-paragraph (c) of Article 5 para. 1 (art. 5-1-c) have been fulfilled in the circumstances of the particular case. With due respect to the review that the national courts have conducted of the facts of the case (paragraph 60 of the judgment) and to their findings and conclusions in the proceedings brought by Mrs Murray, it falls to our Court, pursuant to Article 19 (art. 19) of the Convention, to ensure the observance of the engagement undertaken by the States Parties under Article 1 (art. 1) to secure everyone within their jurisdiction, inter alia, the right to liberty and the right to respect for private life. In the exercise of this power of review the Court must ascertain whether the essence of the safeguard afforded by this provision of the Convention 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" (Fox, Campbell and Hartley judgment, p. 18, para. 34).

5. In the instant case the specific circumstances of the entry into and search of the applicants' home by the Army, the limited role of the Army in the investigation of terrorist crimes under United Kingdom law (paragraphs 36 to 38 of the judgment) and, moreover, the personal circumstances of Mrs Murray, a mother of four children with health problems and no criminal record (paragraph 9 of the judgment and document Cour (93) 290, Annexes A-B, pp.100 B-C, 116 B-C), required a higher level of suspicion and the application to the respondent Government of a stricter standard when justifying before this Court the "reasonableness" of the suspicion. Needless to say that the domestic courts examined the issue from the standpoint of section 14 of the 1978 Act, which required an honest and genuine, rather than a reasonable, suspicion. The scope of their examination was confined to that.

6. Regarding the alleged violation of Article 5 para. 2 (art. 5-2) of the Convention, in our view the evidence as to Mrs Murray's questioning at the military screening centre (paragraphs 16 to 27 of the judgment), the vague indications and the questions put to her lack the necessary precision to justify a conclusion that she was informed of the reasons for her arrest. From the recorded questions about her brothers or "about money and about America", it is not possible for us to conclude that it was apparent to her "that she was questioned about her possible involvement in the collection of funds for the purchase of arms for the Provisional IRA by her brothers in the USA".

7. In the Fox, Campbell and Hartley judgment (paragraph 40) the Court declared that "[p]aragraph 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)".

In our opinion, bearing in mind the totality of the circumstances, including the nature of the questions put to Mrs Murray in the course of her interrogation (paragraphs 14 and 21 of the judgment), the information given to Mrs Murray did not meet this basic standard.

8. As to Article 5 para. 5 (art. 5-5) of the Convention, since Mrs Murray's arrest and detention were in breach of paragraphs 1 and 2 of this Article (art. 5-1, art. 5-2), she was entitled to an enforceable right to compensation in accordance with this provision. We would recall, as did the Commission (report, paragraph 75), that in the similar case of Fox, Campbell and Hartley (paragraph 46) the Court found a violation of Article 5 para. 5 (art. 5-5).

9. The alleged violation of Article 8 (art. 8) of the Convention is directly linked with the issues under Article 5 para. 1 (art. 5-1) of the Convention. Consequently, our conclusion is that, a breach of this provision having been found to have occurred in the circumstances of the case, the above-mentioned measures taken by the Army interfering in Mrs Murray's private life cannot, in the absence of an objective justification of the suspicions of Mrs Murray's terrorist activity, be regarded as necessary in a democratic society for the prevention of crime in accordance with paragraph 2 of Article 8 (art. 8-2). We therefore also find a violation of this provision of the Convention.

PARTLY DISSENTING OPINION OF JUDGE MIFSUD BONNICI

1. I am in agreement with the majority on most of the points at issue in this case, starting with the finding that the arrest of the first applicant was carried out on a reasonable suspicion that she had committed an offence; thereby holding that Article 5 para. 1 (art. 5-1) was not violated.

2. I dissent, however, on the second point; that of Article 5 para. 2 (art. 5-2), which guarantees to "everyone who is arrested" the right to be "informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him".

The essential and relevant facts, as accepted in the judgment are that:

(a) When Corporal D. proceeded to the first applicant's house, she said to her, "As a member of Her Majesty's forces, I arrest you." And on being asked twice by the first applicant under what section, Corporal D. replied, "Section 14" (paragraph 12 of the judgment).

(b) Corporal D. told the domestic court that "the purpose of arrest and detention under section 14 was not to gather intelligence but to question a suspected person about an offence" (paragraph 20 of the judgment). This was confirmed by Sergeant B. (paragraph 22).

3. Now there is absolutely nothing in the whole proceedings to indicate that after the first applicant was arrested on the strength of section 14, she was thereafter promptly given the reasons for her arrest and/or informed of any offence with which she was charged.

In the concrete circumstances of the case, I am prepared to allow that promptness can be waived because of the short duration of the detention, but once the first applicant was arrested (and not merely asked to go voluntarily to a place designated for interrogation) she was entitled to be told why she was being arrested - which in effect means "that she was suspected of having committed a given offence". Once that is done, the further information that she was being charged with a given offence can, within a reasonable time, follow. This, however, must be preceded by the first phase, wherein the arrested person must be informed of the reasons for the arrest. This phase cannot be skipped, ignored or disregarded, especially when, as in this case, the person arrested is not charged with an offence.

4. In the view of the majority (paragraph 77 of the judgment) this guarantee was satisfied because

"it must have been apparent to Mrs Murray that she was being questioned about her possible involvement in the collection of funds for the purchase of arms for the Provisional IRA by her brothers in the USA",

which induces the Court to come to the conclusion that

"the reasons for her arrest were sufficiently brought to her attention during her interview".

And therefore there was no violation.

5. In my opinion this decision reduces the meaning of Article 5 para. 2 (art. 5-2) to such a low level that it is doubtful whether in fact it can, if it is adhered to in this form, have any possible concrete application in the future.

In fact what is being held here is that through the contents of an interrogation an accused person can, by inference or deduction, arrive, on his own, to understand "the reasons for his arrest and ... any charge against him". Since the Convention obliges the investigating officer "to inform" the arrested person, I cannot agree that the duty imposed on the investigating officer can be satisfied by the obligation of the arrested person to

carry out a logical exercise so that he will thereby know of the charge against him - surmising both, from the contents of the interrogation.

6. It is not really possible to sustain this interpretation of Article 5 para. 2 (art. 5-2). If it is sustained, then it would mean that the guarantee therein contemplated will only come into play in situations such as that which is described in Franz Kafka's masterpiece The Trial, where the Inspector, who is supposed to interrogate K (the accused person), tells K ,

"I can't even confirm that you are charged with an offence, or rather I don't know whether you are. You are under arrest certainly, more than that I do not know."*

_____ * English translation by W. and E. Muir from the German original Der Prozess - Penguin reprint 1953, p. 18. _____

7. Therefore, the interpretation arrived at is a substantial limitation of the purpose of Article 5 para. 2 (art. 5-2), to which I cannot subscribe, and I find that there was a violation of Article 5 para. 2 (art. 5-2).

8. On all the other points in this judgment, I form part of the majority.

PARTLY DISSENTING OPINION OF JUDGE JAMBRE

k I subscribe to the joint dissenting opinion of Judges Loizou, Morenilla and Makarczyk as regards the violation of Article 5 paras. 1, 2 and 5 (art. 5-1, art. 5-2, art. 5-5).

I also wish to make some additional points, which reflect my own reasoning related to the case.

1.

In the examination of the matter of "reasonable suspicion", the key issue seems to me to be whether "at least some facts or information" were furnished by the Government, which would satisfy an objective observer that the person concerned may have committed the offence. In my opinion this condition of reasonableness was not fulfilled. It was suggested by the representative of the Government that "primary facts", obtained from a reliable confidential source, which cannot be disclosed must be differentiated from "something other than the primary facts or information". Elements of the latter kind, he claimed, had been provided which should be capable of so satisfying an objective observer. He cited:

(a) the honest belief of the arresting officer,

(b) the briefing by a superior officer, and

(c) circumstances preventing disclosure of information.

In my view all three are capable of satisfying the condition of an honest or genuine suspicion, but do not constitute "at least some facts or information" on which a reasonable suspicion could be based. Neither honesty of an arresting officer, nor honesty of superior officer, nor the circumstances of a suspected terrorist crime fall into this category.

At the hearing the Government's representative also identified three other kinds of more specific "objective evidence", namely the conviction of the first applicant's brothers, her contacts with them and her visits to America. The problem with these facts, as I see it, is that none of them per se may be held against the first applicant to incriminate her. They rather resemble the incrimination of a person's status, in this case the first applicant's kinship relationship.

I am therefore led to conclude that there has been a violation of Article 5 para. 1 (art. 5-1) in respect of the first applicant, following the reasoning in the Fox, Campbell and Hartley v. the United Kingdom judgment (judgment of 30 August 1990, Series A no. 182).

2.

Was it possible for the Court to set some modified standards for "reasonable suspicion" in the context of emergency laws enacted to combat terrorist crime?

At this point I wish to explain some of my "philosophic prejudices" related to this issue. Much was made in the Government's memorial of the specific features of terrorist crime and the relevant emergency provisions, allowing for the tipping of the balance between State and individual interests in the direction of the raison d'Etat. However, the existence of an emergency may be used to argue in favour of both interests involved, namely that of the Government and that of the arrested person. For example, under emergency laws, individual rights may be abused even more easily and on a larger scale than in normal times. They should therefore be given an even more careful protection in view of the intensity of national interests in taking repressive measures against crime. Suspects should thus not be denied being provided with at least some evidence and grounds for their arrest, in order to be able to challenge the allegations against them. Neither should the competent domestic court be left without persuasive evidence supporting the required reasonableness of the arrest.

I also do not dispute that by and large intelligence-gathering organisations do indeed obtain "reliable" items of information which have to be kept confidential, and which should be trusted without closer examination.

But are the items obtained all and always relevant? We may assume that at least some of them are irrelevant or already notorious. Information on persons' travel abroad or on their kinship relationships, for example, may be very reliable and also happen to be classified as secret, but it may be irrelevant or already notorious. Therefore I would hesitate to make life for the intelligence-gathering services too easy, at the expense of detainees and especially at the expense of the domestic courts.

3.

My underlying philosophic approach having been identified, some more "technical" points about the case may be made.

The search for a balance between the State's interest in fighting crime and the protection of the individual's fundamental rights is the obvious task of the Strasbourg Court. To this end I would propose clarifying the following preliminary issues:

First, what is the relationship between the Article 5 para. 1 (c) (art. 5-1-c) requirement of "reasonable suspicion" and the Article 5 para. 2 (art. 5-2) right to be "informed promptly of the reasons for his arrest and of any charge against him"?

Are grounds for reasonable suspicion identical to reasons for arrest?

A usual consequence of the implementation of Article 5 para. 1 (c) (art. 5-1-c) is that the national courts will, if need be, be called on to decide whether the arresting officer entertained reasonable suspicion of an offence committed by the detainee, while the purpose of Article 5 para. 2 (art. 5-2) is to enable the arrested person to assess the lawfulness of the arrest and take steps to challenge it, if need be. This difference may justify differential treatment of evidence supporting such reasons in terms of their confidentiality.

A further point is that the Court referred in the Fox, Campbell and Hartley case to "information which ... cannot ... be revealed to the suspect or produced in court to support the charge".

Two questions seem to me relevant in this respect. First, is there a difference between revealing information to the suspect and then producing it in court? Probably not. And secondly, is there a difference between information made available to the court and information produced in a court, that is revealed to the suspect?

In this connection I see some scope for compromise between the wish to preserve the Fox, Campbell and Hartley standard and, at the same time, the need to expand and elaborate its reasoning in order to adapt it better to the Murray case and other similar cases.

The "technical" question could also be posed whether otherwise confidential information could not be rephrased, reshaped or tailored in order to protect its source and then be revealed. In this respect the domestic court could seek an alternative, independent expert opinion, without relying solely on the assertions of the arresting authority.

4.

I voted for non-violation of Article 8 (art. 8) because I do not see a necessary link between the breach of the requirements of Article 5 para. 1 (art. 5-1) and the interference in the private and family life of Mrs Murray (and her family). I am satisfied with the approach of the Court in regard to Article 8 (art. 8), and, in particular, with its conclusion that the interference was in accordance with the law and that the contested measures pursued a legitimate aim and were necessary in a democratic society (paragraphs 88 to 94 of the judgment).

However, in the light of my views as to the violation of various provisions of Article 5 (art. 5), I cannot subscribe to the Court's reasoning in paragraph 92 of the judgment, namely that Mrs Murray was reasonably suspected of the commission of a terrorist-linked crime and that this fact justified the need to enter and search her home. The finding of non-violation of Article 8 (art. 8) can be sufficiently well grounded regardless of the reasoning in paragraph 92 of the Court's judgment.