



An Chartlann Náisiúnta National Archives

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2019

Mr. H. G. G. G.
15.11.89

N. Brown
I mentioned to

BRITISH DEROGATION FROM THE CONVENTION ON HUMAN RIGHTS
CALL BY BRITISH EMBASSY

Too small. 19/11

Patrick Brogan and others were detained under the PTA in Northern Ireland in 1984 for periods in excess of 4 days. They claimed successfully at Strasbourg that their detentions were unlawful.

Mr Thorp of the British Embassy left a written statement by the Home Secretary with me today. He said the decision to notify a derogation from the European Convention on Human Rights had been considered very carefully but it had not been possible to avoid it in view of the intelligence problem and the importance of maintaining the independence of the judiciary.

I said it was helpful to have the Home Secretary's statement in advance and important that it had been communicated in parallel through the Secretariat in view of its significance for Northern Ireland. The decision would cause public concern, coming shortly after the discovery of a police conspiracy to fabricate statements during the detention of the Guildford Four under the PTA. The question of safeguards for people in custody would arise; we had previously made proposals to shorten the period of detention, place the safeguards which already existed on the same statutory basis in Northern Ireland as in Britain, give earlier access to legal advice, provide information to relatives and consider introducing sound and video recording of interviews in all cases. We would be returning to these.

We were informed later in the Secretariat that no derogation is intended in respect of persons detained under the heading of international terrorism because it could not be justified under Article 15 of the Convention (an emergency "threatening the life of the nation"). Such persons will be released after 4 days. This will increase the feeling of anti-Irish discrimination.

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Declan O' Donovan
14 November 1989

" : PSS / Mr Nally
Mr Gallagher
Mr Bowman DOJ
Mr Russell AGO
Com Allent.

THE HOME SECRETARY WILL ANNOUNCE TODAY, 14 NOVEMBER, BY MEANS OF A WRITTEN ANSWER THE GOVERNMENT'S DECISION ON THE ECHR JUDGEMENT IN THE CASE OF BROGAN AND OTHERS. TEXT OF QUESTION AND ANSWER AS FOLLOWS:

QUESTION

TO ASK THE SECRETARY OF STATE FOR THE HOME DEPARTMENT WHETHER THE GOVERNMENT HAS REACHED A CONCLUSION ON ITS RESPONSE TO THE JUDGEMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASE OF BROGAN AND OTHERS, CONCERNING DETENTION UNDER THE PREVENTION OF TERRORISM LEGISLATION.

ANSWER

THE EUROPEAN COURT OF HUMAN RIGHTS HELD IN THE CASE OF BROGAN AND OTHERS THAT THE DETENTION OF THE FOUR APPLICANTS UNDER S12 OF THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1984 (NOW S14 OF THE ACT OF 1989) CONSTITUTED A BREACH OF ARTICLE 5(3) OF THE EUROPEAN CONVENTION FOR HUMAN RIGHTS BECAUSE NONE OF THE APPLICANTS WAS BROUGHT QUOTE PROMPTLY UNQUOTE BEFORE A JUDICIAL AUTHORITY. UNDER S14 A PERSON WHO IS ARRESTED ON REASONABLE SUSPICION OF INVOLVEMENT IN ACTS OF TERRORISM MAY BE HELD BY THE POLICE FOR A MAXIMUM OF 48 HOURS DURING WHICH PERIOD THE NECESSITY FOR CONTINUED DETENTION MUST BE REVIEWED REGULARLY BY A SENIOR POLICE OFFICER NOT INVOLVED IN THE INVESTIGATION. THE SECRETARY OF STATE MAY THEN EXTEND THAT PERIOD OF DETENTION UP TO A MAXIMUM OF A FURTHER FIVE DAYS BEFORE THAT PERSON MUST EITHER BE RELEASED OR MUST BE CHARGED OR EXCLUDED FROM A PART OR WHOLE OF THE UNITED KINGDOM. SINCE THE COURT DELIVERED ITS JUDGEMENT ON 29 NOVEMBER 1988 THE GOVERNMENT HAS BEEN CONSIDERING WHETHER IT WOULD BE POSSIBLE TO INTRODUCE A JUDICIAL ELEMENT IN THE PROCEDURE FOR AUTHORISING EXTENSIONS OF DETENTION IN A WAY WHICH WOULD BE COMPATIBLE WITH THE PROVISIONS OF THE CONVENTION AND WHICH WOULD NOT WEAKEN THE EFFECTIVENESS OF ITS RESPONSE TO TERRORISM.

THE GOVERNMENT BELIEVES THAT IN THE CONTEXT OF THE CONTINUED THREAT TO THE UNITED KINGDOM, ON A SCALE UNKNOWN ELSEWHERE IN EUROPE, POSED BY TERRORISM CONNECTED WITH THE AFFAIRS OF NORTHERN IRELAND THE POWER TO HOLD TERRORIST SUSPECTS FOR A PERIOD OF UP TO SEVEN DAYS IS ESSENTIAL. THE CONTINUED NECESSITY FOR THIS POWER - AND THE OTHER POWERS IN THE PREVENTION OF TERRORISM ACT - IS REVIEWED ANNUALLY BY BOTH HOUSES OF PARLIAMENT.

DECISIONS TO AUTHORISE THE DETENTION OF TERRORIST SUSPECTS FOR PERIODS BEYOND 48 HOURS MAY BE, AND OFTEN ARE, TAKEN ON THE BASIS OF INFORMATION, THE NATURE AND SOURCE OF WHICH COULD NOT BE REVEALED TO A SUSPECT OR HIS LEGAL ADVISER WITHOUT SERIOUS RISK TO INDIVIDUALS ASSISTING THE POLICE AND THE PROSPECT OF FURTHER VALUABLE INTELLIGENCE BEING LOST. ANY NEW PROCEDURE WHICH AVOIDED THOSE DANGERS WOULD REPRESENT A RADICAL DEPARTURE FROM THE PRINCIPLES WHICH GOVERN JUDICIAL PROCEEDINGS IN THIS COUNTRY AND COULD SERIOUSLY AFFECT PUBLIC TRUST AND CONFIDENCE IN THE INDEPENDENCE OF THE JUDICIARY. THE GOVERNMENT WOULD BE MOST RELUCTANT TO INTRODUCE ANY NEW PROCEDURE WHICH COULD HAVE THIS EFFECT.

THE GOVERNMENT FURTHER BELIEVES THAT THE PRESENT ARRANGEMENTS REPRESENT REASONABLE SAFEGUARDS FOR THE DETAINED PERSON. THEY GUARANTEE TO THE SUSPECT AN EARLY REVIEW OF THE CONTINUED NEED FOR HIS DETENTION, PROVIDE THAT ANY EXTENSION OF THAT DETENTION BEYOND TWO DAYS MUST BE AUTHORISED BY THE SECRETARY OF STATE, AND THAT HE MUST BE RELEASED, CHARGED OR EXCLUDED WITHIN A MAXIMUM OF SEVEN DAYS FROM HIS ARREST.

THE GOVERNMENT HAS CONCLUDED THAT A SATISFACTORY PROCEDURE FOR THE REVIEW OF DETENTION OF TERRORIST SUSPECTS INVOLVING THE JUDICIARY HAS NOT BEEN IDENTIFIED. THE DEROGATION NOTIFIED ON 23 DECEMBER 1988 UNDER ARTICLE 15 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS AND ARTICLE 4 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS MUST AND WILL THEREFORE REMAIN IN PLACE FOR AS LONG AS CIRCUMSTANCES REQUIRE. THE DEROGATION IS LIMITED TO THE POWERS UNDER THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT 1989 TO DETAIN FOR UP TO SEVEN DAYS THOSE SUSPECTED OF INVOLVEMENT IN THE COMMISSION, PREPARATION OR INSTIGATION OF ACTS OF TERRORISM CONNECTED WITH THE AFFAIRS OF NORTHERN IRELAND.