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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY MARTIN SHAW FOR

JUDICIAL REVIEW

KERR J

Introduction

[1] Martin Shaw was arrested on 4 May 2001 under section 41 of the Terrorism Act 2000. Later on that day he was charged with collecting and possessing information useful to terrorists. He appeared at Ballymena Magistrates' Court on 5 May 2001 and was remanded in custody on those charges. The question of bail did not arise because of the restriction on the magistrate's powers to grant bail on the charges that the applicant faced.

[2] On 18 May 2001 an application for bail was made to the High Court on Mr Shaw's behalf. His counsel applied to have the application adjourned generally because he wished to obtain from the prosecution disclosure of certain documents. This application was granted. The matter was further adjourned on 6 June 2001 and was finally heard on 15 June 2001. McLaughlin J refused the application on the basis that there were substantial grounds for believing that the applicant would commit an offence on bail. The application for bail was renewed and adjourned subsequently on a number of occasions.

[3] Eventually, on 19 December 2001 an application for bail was made before Girvan J. The gravamen of the case made on behalf of the applicant was that there had been unacceptable delay on the part of the prosecuting authorities. Girvan J refused the application but commented that the case should proceed with dispatch and that if there was further delay a further application for bail could be made to him.

[4] On 30 January 2002 another application for bail was made. Girvan J heard the application and delivered a written judgment on 12 February 2002 in which he refused bail. The judgment is reported at [2002] NIJB 147. At page 153 Girvan J said: -

> "In this case I consider that there are substantial grounds for believing that if released on bail the defendant would commit further offences. The gathering of information relating to security forces is a crime of the utmost gravity. The information can be easily passed and disseminated to paramilitaries. The defendant has had a record showing a serious criminal propensity and has had associations with subversives in the past. The information puts at risk the lives and safety of individual members of the security forces whose right to life and safety call for protection. The passage of time since the defendant has been in custody is undoubtedly long and the prosecution should have made more progress in bringing the matter on for committal and trial. Having regard to my construction of s 3(3) of the 1996 Act [the precursor of section 67 of the Terrorism Act 2000] I do not consider that I have jurisdiction to grant bail in this case. Even if unreasonable delay could in itself be a ground for granting bail overriding the court's concern at the prospect of the commission of further offences I do not consider that the delay has reached that point."

[5] On 21 February 2002 the resident magistrate fixed 21 March 2002 as the date for the hearing of the preliminary inquiry. For reasons that remain unexplained the prosecution was not in a position to proceed and the case was adjourned. It was scheduled again for 12 April 2002 but was adjourned on that date to enable the applicant to prepare an application to stay the proceedings for abuse of process. This application was heard on 26 April 2002 and the resident magistrate reserved judgment. On 10 May 2002 the application to stay the proceedings was rejected and on that date the applicant was committed for trial in custody. Subsequently he pleaded guilty to the charges and was sentenced to a term of imprisonment. He has now been released.

[6] By this application Mr Shaw makes two principal challenges. First he claims that the legislative provisions relating to bail in scheduled cases (*i.e.* those types of case that are mentioned in Schedule 9 to the Terrorism Act) are incompatible with article 5 of the European Convention on Human Rights.

Secondly, he asserts that the Secretary of State for Northern Ireland ought to have made regulations under section 72 of the Terrorism Act imposing time limits for the holding of a preliminary inquiry into the applicant's case.

The statutory provisions

[7] Section 67 of the Terrorism Act provides: -

> "**67.** - (1) This section applies to a person who-
>
> (a) has attained the age of fourteen, and
>
> (b) is charged with a scheduled offence which is neither being tried summarily nor certified by the Director of Public Prosecutions for Northern Ireland as suitable for summary trial.
>
> (2) Subject to subsections (6) and (7), a person to whom this section applies shall not be admitted to bail except-
>
> (a) by a judge of the High Court or the Court of Appeal, or
>
> (b) by the judge of the court of trial on adjourning the trial of a person charged with a scheduled offence.
>
> (3) A judge may, in his discretion, admit a person to whom this section applies to bail unless satisfied that there are substantial grounds for believing that the person, if released on bail (whether subject to conditions or not), would-
>
> (a) fail to surrender to custody,
>
> (b) commit an offence while on bail,
>
> (c) interfere with a witness,
>
> (d) otherwise obstruct or attempt to obstruct the course of justice, whether in relation to himself or another person, or

(e) fail to comply with conditions of release (if any)."

[8] The offences that Mr Shaw was charged with are scheduled offences. On these charges he could not be admitted to bail by the resident magistrate. It was submitted for Mr Shaw that a High Court judge could not grant bail either if he was satisfied that one of the consequences outlined in section 67 (3) would occur if the applicant was admitted to bail.

[9] By virtue of article 30 of the Magistrates' Courts (Northern Ireland) Order 1981 a magistrates' court may hold a preliminary investigation into an indictable offence. This involves witnesses giving evidence to the court. Article 31 (1) provides, however: -

> "31. - (1) If the prosecution requests a magistrates' court to conduct a preliminary inquiry and the accused does not object to such an inquiry, a magistrates' court, instead of conducting a preliminary investigation, may conduct a preliminary inquiry into an indictable offence."

[10] In the case of a scheduled offence, however, where the prosecution asks the magistrate to conduct a preliminary inquiry he must do so. Section 66 of the Terrorism Act provides: -

> "**66.** - (1) In proceedings before a magistrates' court for a scheduled offence, if the prosecution requests the court to conduct a preliminary inquiry into the offence the court shall grant the request.
>
> (2) In subsection (1) "preliminary inquiry" means a preliminary inquiry under the Magistrates' Courts (Northern Ireland) Order 1981.
>
> (3) Subsection (1)-
>
> (a) shall apply notwithstanding anything in Article 31 of that Order,
>
> (b) shall not apply in respect of an offence where the court considers that in the interests of justice a preliminary investigation should be conducted into the offence under that Order, and

(c) shall not apply in respect of an extra-territorial offence (as defined in section 1(3) of the Criminal Jurisdiction Act 1975))."

[11] Where the prosecution intends to ask the court to hold a preliminary inquiry it is required under article 32 (1) of the 1981 Order to furnish a notice of its intention to do so together with a statement of the complaint against the accused, the statements of witnesses on whose evidence the case depends and various other specified documents. If these documents have not been served when the preliminary inquiry is due to be heard, article 32 (4) (c) comes into play. It provides: -

"If, when the accused appears before the court and the charge is read to him according to law, -

…

(c) the documents mentioned in paragraph (1) (b) have not been served on the accused,

the court shall remand the accused in accordance with Article 47."

[12] Article 47 provides: -

47. – (1) Without prejudice to any other provision of this Order, in adjourning any proceedings for an offence a magistrates' court may remand the accused-

(a) in custody, that is to say, commit him to custody to be brought at the end of the period of remand before that court or any other magistrates' court for the county court division for which the court is acting or before any other magistrates' court having jurisdiction to conduct the proceedings; or

(b) on bail, that is to say, take from him a recognizance conditioned for his subsequent appearance before such court;

and may, if the accused is remanded in custody, certify in the prescribed manner its consent to the accused being remanded on bail in accordance

> with subparagraph (b), in which event the court shall fix the amount of the recognizance with a view to its being taken subsequently.

[13] Section 72 of the Terrorism Act deals with the power of the Secretary of state to make regulations in relation to time limits. So far as is material it provides: -

> "**72.** - (1) The Secretary of State may by regulations make provision, in respect of a specified preliminary stage of proceedings for a scheduled offence, as to the maximum period-
>
> (a) to be allowed to the prosecution to complete the stage;
>
> (b) during which the accused may, while awaiting completion of the stage, be in the custody of a magistrates' court or the Crown Court in relation to the offence"

Article 5

[14] Article 5 (3) of the European Convention on Human Rights provides: -

> "Everyone arrested or detained [for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence] shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

[15] Article 5 (4) 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 judicial review application

[16] For the applicant Mr Barry Macdonald QC argued that section 67 (3) allowed the judge no discretion in the matter of bail for a person charged with a scheduled offence where the judge was satisfied that one of the consequences contained in that section would occur. He suggested that this restriction on the judge's discretion constituted a violation of article 5 (3) and (4) of ECHR. The judge ought to be in a position to have regard to and weigh up all the factors that might affect the question whether an accused person should be released on bail.

[17] Mr Macdonald further submitted that the effect of article 32 (4) (c) was that where a preliminary inquiry was proposed and the prosecution had not served the necessary papers on the defendant, the magistrates' court was obliged to remand the accused and if he was charged with a scheduled offence the magistrate had no power to admit him to bail; the accused had to be remanded in custody. This was in breach of the applicant's rights under article 5 (4).

[18] Finally Mr Macdonald contended that section 72 of the Terrorism Act, although framed in permissive terms, in fact imposed a duty on the Secretary of State to introduce regulations to impose time limits for the holding of a preliminary inquiry. He pointed out that time limits in force in England and Wales require that an accused person such as the applicant have a preliminary inquiry within seventy days. Here the applicant was kept in custody for three hundred and seventy days before his preliminary inquiry was held. The failure to introduce equivalent time limits for detained persons in Northern Ireland amounted, Mr Macdonald suggested, to discrimination contrary to article 14 of ECHR.

Section 67 (3) of the Terrorism Act

[19] On a conventional interpretation of this provision a High Court judge is prevented from admitting an applicant to bail if satisfied that he would do or fail to do any of the things specified in the subparagraphs of the subsection. Does this conflict with the applicant's rights under article 5 (4) of the Convention?

[20] In *Ilijkov v Bulgaria* [2001] ECHR 33977/96 ECtHR held that while art 5(4) of the Convention did not impose an obligation on a judge examining an appeal against detention to address every argument in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee capable of putting into doubt the conditions essential for the lawfulness, in the Convention sense, of the detention. At paragraph 94 of its judgment the court said: -

> " 94. The Court recalls that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements set out in [domestic law] but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see the *Brogan and Others v the United Kingdom* judgment of 29 November 1988, Series A No. 145-B, pp 34-35, para 65, and *Grauslys v Lithuania*, No. 36743/97, paras 51-55, 10 October 2000, unreported)."

[21] The obligation to consider the lawfulness in Convention terms of the continued detention of the detainee therefore relates to the "reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention". In the present case there was no dispute as to the reasonableness of the suspicion that the applicant was guilty of the crimes charged. It has not been suggested that the purpose pursued by the arrest of the applicant was not for a legitimate purpose but Mr Macdonald suggested that the fact that the court was obliged to refuse bail if satisfied that its grant would bring about any of the consequences detailed in section 67 (3) meant that his detention on foot of his arrest was in breach of article 5 (3).

[22] In support of this claim Mr Macdonald relied on the observations of Girvan J in *Re Shaw* and the judgment of ECtHR in *Caballero v United Kingdom* [2000] Crim.L.R. 587. In *Re Shaw* Girvan J said: -

> "… on a straightforward construction of [the equivalent of section 67 (3)] the court has no right to grant bail if it finds that there are substantial grounds for believing that the defendant if released would (inter alia) commit a further offence while on bail or otherwise obstruct the course of justice."

And in *Caballero v United Kingdom* the government accepted that section 25 of the Criminal Justice and Public Order Act 1994 (which imposed an absolute prohibition on the grant of bail on a charge of certain serious offences where the accused had a prior conviction for any such offence) was in breach of article 5 (3).

[23] In *Caballero* no consideration of whether to grant bail was possible where there had been a previous relevant conviction. That is not the case here. The High Court is enjoined to consider whether it is satisfied that there are substantial grounds for believing that one of the consequences specified in section 67 (3) might ensue if the applicant for bail is released. And it is well recognised in the jurisprudence of ECtHR that the prospect of the accused committing further offences is a factor to be taken into account in deciding whether bail should be granted – see *Matznetter v Austria* [1969] 1 EHRR 198 at paragraph 9 and *Clooth v Belgium* [1992] 14 EHRR 717 at paragraph 40 where the court said: -

> "40. The Court considers that the seriousness of a charge may lead the judicial authorities to place and leave a suspect in detention on remand in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned."

[24] Clearly, therefore, the prospect of an applicant for bail committing further offences is relevant to the legitimacy of his continued detention "in the Convention sense". But if the court is precluded from considering other factors where it is satisfied that there are substantial grounds for believing that the applicant will commit an offence while on bail, does this conflict with the applicant's Convention rights?

[25] In *Re Shaw* Girvan J considered the possibility of such a conflict in the following passage at page 153: -

> "The wording of s 3(3) [the precursor of section 67 (3)] construed literally could on the face of it in a given case conflict with the Convention rights of a defendant. This could, for example, arise if the court considered that the prosecution delay was excessive and inexcusable (and thus justifying bail) but on the other hand found that if released on bail the defendant would be likely to commit further offences."

[26] It is to be remembered, however, that article 5 (3) requires that a detained person be brought before a judge or other officer authorised by law to exercise judicial power so that the question of his release pending trial be determined. The application of section 67 (3) calls for the exercise of judicial power. The

judge must consider whether it has been established that there are substantial grounds for believing that any of the consequences there enumerated are likely to happen. He is only precluded from granting bail when he concludes that this has been established. In this context it is relevant that ECtHR has accepted that the danger of absconding is a reason for refusing bail – (*Stögmüller v. Austria* [1969] 1 EHRR 155, para. 15 and *Neumeister v. Austria* [1968] 1 EHRR 83 para 10); and that bail may be refused where there is a well-founded risk that the accused, if released, would take action to prejudice the administration of justice (*Wemhoff v Germany* [1968] 1 EHRR 55 and *Letellier v France*, [1991] 14 EHRR 83).

[27] The circumstances in which bail must be refused under section 67 (3) broadly mirror those which ECtHR has recognised as justifying the refusal of bail. It is true that the Strasbourg court has been careful to stipulate that there must be a proper evaluation of those circumstances but such an evaluation must also occur for the purposes of section 67 (3). The court is required to be satisfied that there are substantial grounds for believing that the consequences specified in the subsection would occur before being precluded from granting bail. This must involve the production of sufficient evidence to satisfy the court that one of the circumstances outlined will ensue. That will require a close examination and evaluation of the reasons proffered by the authorities opposing the application for bail. I am therefore satisfied that the subsection is not incompatible with article 5 of the Convention.

Article 32 of the Magistrates' Courts Order

[28] As I have already observed, article 32 (1) requires the prosecution (where it intends to ask the court to hold a preliminary inquiry) to furnish a notice of its intention to do so together with various statements. If these documents have not been served when the preliminary inquiry is due to be heard, article 32 (4) (c) provides that the magistrate shall remand the accused in accordance with article 47. Again as noted above, article 47 requires the accused to be remanded in custody or on bail. Since a magistrate does not have power to remand on bail a person charged with a scheduled offence, it is suggested that the magistrate is powerless to order the release of such a person where the prosecution has failed to serve the necessary documents.

[29] For the respondent, Mr Maguire submitted that three alternatives were open to the magistrate in circumstances where the prosecution had failed to serve the necessary papers to allow the preliminary inquiry to proceed. The magistrate could order that a preliminary investigation be conducted; he could refuse to remand the accused and order his release; and he could stay the proceedings against the accused on the basis that the failure to proceed with the preliminary inquiry constituted an abuse of process.

[30] On the first of these alternatives Mr Macdonald argued that the magistrate was precluded by section 66 (1) of the Terrorism Act from refusing a prosecution request to hold a preliminary inquiry. But section 66 (3) (b) provides that subsection (1) shall not apply in respect of an offence where the court considers that in the interests of justice a preliminary investigation should be conducted. If the resident magistrate concluded that the failure to furnish statements under article 32 of the Magistrates' Court Order could not be justified and that an accused person was being deprived of a committal hearing, he could – and, in an appropriate case should – have resort to his power to order a preliminary investigation to take place.

[31] The magistrate is not debarred, in my opinion, from invoking this power by the provisions of article 32 (4) (c) of the 1981 Order. This provision is concerned with the position when a preliminary inquiry is to be held. That can only occur with the consent of the accused or by operation of section 66 (1) of the Terrorism Act. In *Re McAleenan's application* [1985] NI 496 the Divisional Court held that the decision whether to adjourn the proceedings and remand the accused in custody or to hold the committal proceedings is always a matter for the discretion of the magistrate. At page 505C/E Hutton J said: -

> "If a stage in a case were reached after a series of remands where, no doubt after a number of warnings by the magistrate that he was concerned by the delay on the part of the of the prosecution in preparing its case, the magistrate refused a further adjournment and a further remand in custody and, notwithstanding that the prosecution claimed that it was not yet ready to present its case, directed that the committal proceedings should take place; and if the prosecution failed to adduce evidence to show that there was a case on which the accused should be put on trial, the magistrate would, in the absence of a separate reason for keeping him in custody, discharge the accused."

[32] Mr Macdonald submitted that this decision should not be followed as it failed to refer to article 32 (4) (c) of the 1981 Order. As I have said, this provision arises only where a preliminary inquiry is to be held. Where the accused objects, a preliminary investigation must be held under article 30 unless the provisions of section 66 (1) of the Terrorism Act come into play and these may be overridden if the magistrate is satisfied that the interests of justice require it. It appears to me that the circumstances outlined by Hutton J in *Re McAleenan* are pre-eminently such as would warrant recourse to the dispensing power in section 66 (3) (b). I am satisfied therefore that if the

prosecution fail to serve the necessary papers to enable a preliminary inquiry to be held, the magistrate has power, where he considers that the interests of justice require it, to order that a preliminary investigation take place and where the prosecution is not in a position to proffer evidence sufficient to justify the accused's return for trial, to discharge him.

[33] The third alternative suggested by Mr Maguire – that the magistrate stay the proceedings against an accused on the basis that the failure to proceed to a preliminary inquiry constituted an abuse of process - should arise only exceptionally but I am satisfied that this course is open to a magistrate if he considers that the failure of the prosecuting authorities to proceed with a committal hearing would violate the applicant's rights under article 5 of the Convention. In *R (Wardle) v Crown Court at Leeds* [2001] 1AC 754 the House of Lords held that the introduction of a new charge solely for the purpose of prolonging an accused person's detention in custody would amount to an abuse of process. By the same token, a failure to proceed with a preliminary inquiry (where that had the effect of detaining the accused unnecessarily) would be an abuse of process. In this context it should be noted that it is not necessary that it be shown that the prosecutor has acted *mala fide.* It is enough that it be shown that the detention is for an ulterior purpose *e.g.* the further detention of the accused person in custody – see paragraph 156 of the speech of Lord Scott in *Wardle.*

[34] In the event, I am satisfied that there is ample power available to the magistrate to deal with a failure on the part of the prosecuting authorities to proceed with a preliminary inquiry. Article 32 (4) (c) does not oblige the magistrate to remand an accused person in custody where the prosecution has failed, without reasonable cause, to serve the committal papers. On its proper application this provision is not incompatible with article 5 (4) of the Convention.

Section 72 of the Terrorism Act

[35] In support of the claim that the Secretary of State was under a duty to make regulations for custody time limits Mr Macdonald relied on the decision of the House of Lords in *Singh v Secretary of State* [1992] 1 WLR 1052. In that case an issue arose as to whether the Secretary of State was required by section 18 of the Immigration Act 1981 to make regulations concerning the giving of notice of a decision for the purposes of appeal. In holding that the subsection required the Secretary of State to make regulations Lord Jauncey of Tullichettle said at page 1056: -

> "Sections 13 to 16 of the Act confer rights of appeal upon persons in relation to various actions and decisions affecting them, such as refusal of leave to enter the United Kingdom, deportation orders and

> directions for removal. If those rights are to be effective the persons concerned must, where possible, be given such notice as will enable them to exercise those rights. In my view Parliament intended that the Secretary of State should be required to make regulations that would ensure, so far as practicable, that persons upon whom the rights of appeal had been conferred should be enabled effectively to exercise those rights. It follows that the Secretary of State does not have a discretion as to whether or not he shall make regulations."

[36] In *Singh's* case if regulations were not made, the right of appeal conferred by the legislation could not have been exercised. This is not the case under section 72. It appears to me to be clear that the legislative intention was to give the Secretary of State a discretion whether to make regulations. The applicant is not deprived of any statutory rights by the failure of the Secretary of State to exercise the power under section 72.

[37] In an affidavit filed on behalf of the respondent, Nicholas Perry, the associate director of policing and security in the Northern Ireland Office explained the approach of the Secretary of State to the question of introducing time limits in the following paragraphs: -

> "2. … Since 1992, all criminal justice agencies have operated under the aegis of the administrative time limits scheme … These arrangements are monitored by the case progress group which is chaired by a senior NIO member. It meets quarterly and includes representatives from the Law Society and the Bar Council. There is also a progress and tracking group which comprises representatives from the various criminal justice agencies and is chaired by an assistant director from the Department of Public Prosecutions.
>
> 3. Consideration has been given from time to time by the Secretary of State as to whether or not to deal with this matter by way of regulations under section 72 but to date the judgment has been that as the existing administrative system operates reasonably satisfactorily there is no need to bring in regulations.

> 4. The administrative time limits scheme is currently under review and the outcome is expected in the near future. The question of making regulations under section 72 will be considered again in the light of the outcome of the above review."

[38] Mr Macdonald suggested that the explanation offered by Mr Perry failed to identify the factors that had influenced the decision of the Secretary of State and did not disclose what weight had been attached to those factors. I do not accept this argument. The reason for not exercising the power is clear. It is because the Secretary of State has concluded that the administrative arrangements that are currently in place operate satisfactorily. That reason does not require further elucidation or elaboration.

[39] Regulations imposing time limits have been introduced in England (The Prosecution of Offences (Custody Time Limits) Regulations 1987) and Mr Macdonald argued that the failure to introduce similar time limits in Northern Ireland discriminated against criminal defendants in this jurisdiction and was therefore a breach of the applicant's rights under article 14 of the Convention. By regulation 4 (4) of the 1987 Regulations the maximum period of custody in the case of an offence triable on indictment between the accused's first appearance and the time when the court decides whether or not to commit the accused to the Crown Court for trial, is 70 days. Mr Macdonald contrasted this with the 370 days that elapsed between the time that the applicant first appeared before a court and his return for trial.

[40] In *R v Manchester Crown Court ex parte McDonald* [1998] 1 All ER 803, 805 Lord Bingham of Cornhill CJ commented on the need for the 1987 Regulations in the following passage: -

> "The general presumption in favour of liberty is reflected in section 4 (1) of the Bail Act 1976 which grants a right to bail unless conditions specified in Schedule 1 to the Act are satisfied.
>
> …
>
> Thus the general right of any unconvicted person to remain at liberty until convicted may be curtailed if certain stringent conditions are shown to be satisfied.
>
> If the law ended at that point it would manifestly afford inadequate protection to unconvicted defendants, since a person could, if the Bail Act

> conditions were satisfied, be held in prison awaiting trial indefinitely, and there would be no obligation on the prosecuting authority to bring him to trial as soon as reasonably possible. It was no doubt to rectify that defect that Parliament, in section 22 of the Prosecution of Offences Act 1985, empowered the Secretary of State by regulation to make provision as to the maximum period for which an accused person might be held in custody at different stages of the proceedings against him."

[41] Relying on this passage Mr Macdonald argued that the failure of the Secretary of State to introduce regulations imposing time limits "manifestly afford[ed] inadequate protection to unconvicted defendants" in Northern Ireland. The flaw in this argument is that it presumes that the only way in which unnecessary detention in custody of unconvicted defendants can be avoided is by the imposition of time limits. As this case demonstrates, the prosecution's failure to proceed with a preliminary inquiry can be dealt with in a variety of ways. It is perhaps unfortunate that none of those possibilities was canvassed until 21 March 2002 when the resident magistrate was invited to direct that a preliminary investigation be held. The resident magistrate concluded that it would not have been reasonable to require committal proceedings to take place immediately and allowed a short adjournment for them to take place. Indeed, it appears that the applicant's legal advisers suggested that committal proceedings should be held immediately or that the magistrate should "set an early date for such proceedings". In the event the magistrate chose the latter course.

[42] I am of the opinion that there are adequate safeguards in place to ensure that the accused's rights under article 5 are not violated but I must now address the argument that the failure of the Secretary of State to introduce regulations similar to those in force in England discriminates against unconvicted defendants in this jurisdiction contrary to article 14 of the Convention.

[43] So far as is relevant article 14 provides: -

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national ... origin, association with a national minority, ... or other status."

[44] In *Magee v United Kingdom* [2001] 31 EHRR 822 the applicant complained that unlike the position in Northern Ireland, suspects arrested and detained in England and Wales under Prevention of Terrorism legislation could have

access to a lawyer immediately and were entitled to his presence during interview. In addition, in England and Wales, at the relevant time, incriminating inferences could not be drawn from an arrested person's silence during the interview in contradistinction to the position under the 1988 Order in Northern Ireland. He claimed that these differences in treatment amounted to a violation of his rights under article 14.

[45] ECtHR rejected this argument in paragraph 50 of its judgment: -

> "50. The Court recalls that Article 14 of the Convention protects against a discriminatory difference in treatment of persons in analogous positions in the exercise of the rights and freedoms recognised by the Convention and its Protocols. It observes in this connection that in the constituent parts of the United Kingdom there is not always a uniform approach to legislation in particular areas. Whether or not an individual can assert a right derived from legislation may accordingly depend on the geographical reach of the legislation at issue and the individual's location at the time. For the Court, in so far as there exists a difference in treatment of detained suspects under the 1988 Order and the legislation of England and Wales on the matters referred to by the applicant, that difference is not to be explained in terms of personal characteristics, such as national origin or association with a national minority, but on the geographical location where the individual is arrested and detained. This permits legislation to take account of regional differences and characteristics of an objective and reasonable nature. In the present case, such a difference does not amount to discriminatory treatment within the meaning of Article 14 of the Convention."

[46] This reasoning applies *mutatis mutandis* to the present case. The difference in treatment does not derive from factors such as national origin or association with a national minority or other similar status but from the geographical location of the applicant at the time of his arrest and prosecution. Article 14 has not been breached in this case.

Conclusions

[47] None of the challenges made by the applicant has succeeded. The application for judicial review must be dismissed.