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

CASE OF McLEOD v. THE UNITED KINGDOM

(72/1997/856/1065)

JUDGMENT

STRASBOURG

23 September

In the case of McLeod v. the United Kingdom[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2], as a Chamber composed of the following judges:

Mr THÓR VILHJÁLMSSON, *President*,
Mr A. SPIELMANN,
Sir John FREELAND,
Mr M.A. LOPES ROCHA,
Mr G. MIFSUD BONNICI,
Mr B. REPIK,
Mr P. KŪRIS,
Mr J. CASADEVALL,
Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 22 May and 25 August 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 July 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 24755/94) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 by a British national, Ms Sally McLeod, on 22 May 1994.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 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 8 of the Convention and Article 1 of Protocol No. 1.

Notes by the Registrar

1. The case is numbered 72/1997/856/1065. 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.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

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

3. The Chamber to be constituted included *ex officio* Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 27 August 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr A. Spielmann, Mr M.A. Lopes Rocha, Mr G. Mifsud Bonnici, Mr B. Repik, Mr P. Kuris, Mr J. Casadevall and Mr P. van Dijk (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr Thór Vilhjálmsson, Vice-President of the Court, replaced as President of the Chamber Mr Ryssdal, who died on 18 February 1998 (Rule 21 §§ 4 (b) and 6).

4. As President of the Chamber at the time (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the orders made in consequence, the Registrar received the Government's and the applicant's memorials on 25 and 26 February 1998 respectively.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 18 May 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr H. LLEWELLYN, Foreign and Commonwealth Office, *Agent*,
Mr I. BURNETT, Barrister-at-Law, *Counsel*,
Mr S. BRAMLEY, Home Office, *Adviser*;

(b) *for the Commission*
Mrs J. LIDDY, *Delegate*;

(c) *for the applicant*
Mr B. EMMERSON, Barrister-at-Law,
Ms J. SIMOR, Barrister-at-Law, *Counsel,*
Mr P. LEACH, Legal Officer, Liberty, *Solicitor*.

The Court heard addresses by Mrs Liddy, Mr Emmerson and Mr Burnett.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Ms Sally McLeod, was born in 1952 and lives in Middlesex.

A. Background to the case

7. In April 1986 the applicant and her husband separated and in July 1988 they were divorced. At about that time, the applicant's elderly mother went to live with her in the former matrimonial home, which Ms McLeod had bought with her ex-husband in 1984.

8. Following the couple's separation, proceedings were instigated before the Uxbridge County Court concerning the former matrimonial home and its contents. These proceedings were described by Mr Justice Tuckey in the High Court's judgment of 12 November 1992 as substantial and acrimonious (see paragraph 18 below).

9. On 1 July 1988 the Uxbridge County Court ordered that the former matrimonial home be transferred to the applicant on payment of 30,000 pounds sterling (GBP). Although this amount was paid by the applicant on or about 26 July 1989, the house was not transferred into her sole ownership until after the events in question. Nevertheless, in its judgment of 27 November 1992, the Brentford County Court found that on payment of the GBP 30,000 "the beneficial ownership of the property vested in her as sole owner" (see paragraph 19 below).

10. On 30 June 1989 the Uxbridge County Court ordered the division of the furniture and other moveable property to be found in the former matrimonial home in accordance with a list identified in the order. However, delivery was not effected and on 23 August 1989 the County Court ordered Ms McLeod to make arrangements for the delivery of her ex-husband's property within fourteen days. The order was backed by a penal notice.

11. On 8 September 1989 the applicant delivered property to her ex-husband which, save for one or two items, was not that described in the order. As a result, on 28 September 1989 the Uxbridge County Court made an order committing her to prison for twenty-one days. However, this order was suspended for seven days to allow her to deliver the property identified on the list to Mr McLeod on or before 6 October 1989. Immediately after

the hearing the latter, through his counsel, offered to collect the property to save the applicant the trouble of delivering it. He suggested 4 p.m. on 3 October 1989.

B. Events of 3 October 1989

12. Believing that the applicant had agreed to his suggestion, at 4 p.m. on 3 October 1989 Mr McLeod, accompanied by his brother and sister and a solicitor's clerk, went to the former matrimonial home to collect his property. Fearing that there would be a breach of the peace (see paragraphs 24 to 27 below) because of Ms McLeod's previous unwillingness to comply with orders of the court, Mr McLeod's solicitors made arrangements for two police officers to be present while the property was being removed. When the police officers arrived, they were informed that Mr McLeod was there to collect his property pursuant to an agreement concluded between him and the applicant, and were given a copy of the list but not of the court order. According to one of the police officers, the solicitor's clerk offered to return to his office to get a copy of the order, but the police officer did not require that this be done.

13. One of the police officers knocked at the door of the house. It was answered by the applicant's mother who told him that her daughter was not at home, and that she was unaware of any arrangement concluded between the latter and Mr McLeod. In an affidavit sworn on 21 November 1990, the applicant's mother claimed that the police officer had told her to open the door because they were from the court and had a court order to execute. The applicant's mother opened the door and stepped aside, allowing Mr McLeod and his party access to the property. Subsequent court proceedings held that the entry of Mr McLeod, his siblings, and the solicitor's clerk amounted to a trespass (see paragraph 19 below).

14. Upon entering the house, Mr McLeod and his siblings began removing his property. Although the police officers accompanied them into the house, according to the applicant's mother's affidavit the officers spent most of the time on the front driveway. They did not participate in the removal or disturbance of the property, although one of them checked that only the items on the list were removed.

15. When the applicant returned home at 5.30 p.m., she became angry and objected to the removal of the property. At that stage, one load had been driven away and a second load was in the van, which had been rented by her ex-husband. One of the police officers intervened and insisted that she allow Mr McLeod to leave with the property. She was permitted to inspect the contents of the van but the officer insisted that she should not unload items from it because he feared that, if she did so, there was likely to be a breach

of the peace. He explained to Ms McLeod that any continuing dispute concerning the property should be resolved later by her and her ex-husband's respective solicitors. Just after midnight the applicant's mother, who had recently suffered a stroke, was taken to hospital suffering from high blood pressure.

C. Trespass proceedings in the High Court

16. The applicant instituted criminal proceedings against those involved in the incident, which were unsuccessful. Together with her mother, she then instituted three sets of civil proceedings for trespass, one against her ex-husband and his siblings, one against the solicitor's clerk and a third against the two police officers.

17. On 26 January 1992 the applicant's mother died.

1. Action against the police

18. On 12 November 1992 Mr Justice Tuckey in the High Court dismissed the action against the police officers on the grounds that they had not trespassed on the applicant's land or goods. Although the judge considered that the applicant had not agreed to her ex-husband removing his property from the former matrimonial home on 3 October 1989, he found that the latter genuinely believed that an agreement had been concluded. Furthermore, he considered that the officers had had reasonable grounds for apprehending that a breach of the peace might take place and were therefore entitled, pursuant to the common law as preserved by statute, to enter on and remain at the property without the consent of the owner:

> "The [applicant] contends that the police did not have reasonable grounds for apprehending that there might be a breach of the peace and therefore they were trespassers on the property. I reject this contention. They had been told to go to the house on the information of a solicitor that there might be trouble. The history of the matter makes it clear in my judgment that the solicitor's fears were well-founded. If [the applicant] had been there when her ex-husband's party arrived, I have no doubt that the police constables' role as peace-keepers would have been required."

Regarding the applicant's claims for trespass to goods, the judge found that the police officers had not actively participated in the removal or the disturbance of the applicant's property. Although one of the police officers had checked that only the items on the list figuring in the court's order were removed, "he did not encourage or participate in the removal of those things that apparently were on the list or in the way in which things in or on those items were to be dealt with".

2. Action against the applicant's ex-husband and his siblings and solicitors

19. On 27 November 1992 the Brentford County Court pronounced on the applicant's two remaining civil actions against her ex-husband, his brother and sister and his solicitors. It considered that there had not been any agreement between Ms and Mr McLeod for him to collect his property on 3 October 1989 and that the applicant's mother had not given permission to Mr McLeod and his party to enter the house. The court concluded that, as a result, they had trespassed on Ms McLeod's land and property. She and her mother's estate were awarded GBP 1,950 with interest by way of compensation.

D. Proceedings on appeal

20. On 1 December 1992 the applicant appealed against the decision of Mr Justice Tuckey on the ground that the police officers should have made enquiries before entering her house, that there had been no breach of the peace or threat of a breach of the peace and that the police had been negligent in failing to give adequate protection to her mother.

21. The Court of Appeal dismissed the appeal on 3 February 1994 (*McLeod v. Commissioner of Police of the Metropolis* [1994] 4 All England Law Reports 553). In his judgment Lord Justice Neill held:

> "The real issue in the case, as I see it, is whether the officers had any excuse in law for entering [the former matrimonial home]. It is common ground that some excuse is required because it does not appear that there was any consent to the entry by [the applicant] or her mother. The judge found that they took no active part in removing any property and, as I have said, all [one of the police officers] did was to check a list of what was being taken. But it is clear that they both entered the property and it may be that one of them knocked on the door.
>
> There are two questions which need to be decided. First, in what circumstances, if any, can police officers enter into a private house to prevent a breach of the peace? Secondly, if a right to enter a private house does exist in certain circumstances, did those circumstances exist here?"

Noting that the common-law powers of the police to enter private premises were preserved by section 17(6) of the Police and Criminal Evidence Act 1984 ("the 1984 Act"), the judge considered that the principal authority under common law was the decision of the Divisional Court in *Thomas v. Sawkins* ([1935] King's Bench Reports 249). Lord Justice Neill continued:

> “That was a case where police officers went to a hall where a public meeting which had been extensively advertised was about to take place; the police sergeant in charge of the party was refused admission to the hall but insisted on entering and remaining there during the meeting. The question arose as to whether the police were entitled to take that course.
>
> Lord Hewart, who delivered the first judgment in the case, said this at page 254:
>
> > ‘I think that there is quite sufficient ground for the proposition that it is part of the preventive power, and, therefore, part of the preventive duty, of the police, in cases where there are such reasonable grounds of apprehension as the justices have found here, to enter and remain on private premises.’
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> At page 255 Avory J said, in relation to entering premises in connection with an affray:
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> > ‘... I cannot doubt that he has a right to break in to prevent an affray which he has reasonable cause to suspect may take place on private premises.’
>
> He considered, therefore, that the police officers were justified in what they were doing. Lawrence J at page 257 put the matter as follows:
>
> > ‘If a constable in the execution of his duty to preserve the peace is entitled to commit an assault, it appears to me that he is equally entitled to commit a trespass.’”

Lord Justice Neill further considered that another precedent of relevance for the applicant’s case was *McGowan v. Chief Police Constable of Kingston Upon Hull* (reported in *The Times* on 21 October 1967):

> “In that case police officers had gone into a house where a child was being held in a man’s arms. The police officers said that they had reason to think that a breach of the peace might occur between the man and his mistress. But a question arose as to whether the mistress had authority to give an invitation to the police officers to come in. The Lord Chief Justice when giving his judgment said:
>
> > ‘Regardless of the invitation, there was sufficient [ground] to justify the police entering the house on the basis that they genuinely suspected a danger of breach of the peace occurring.’”

Lord Justice Neill then recalled that the judgment in *Thomas v. Sawkins* had been subjected to criticism in that it had appeared to infringe the basic principle that the law would not intervene until an offence had actually been committed. He also noted that it had been suggested that the precedent established in *Thomas v. Sawkins* should be limited to public meetings, and continued:

> “Having the benefit of argument, I am satisfied that Parliament in section 17(6) [of the 1984 Act] has now recognised that there is a power to enter premises to prevent a

> breach of the peace as a form of preventive justice. I can see no satisfactory basis for restricting that power to particular classes of premises such as those where public meetings are held. If the police reasonably believe that a breach of the peace is likely to take place on private premises, they have power to enter those premises to prevent it. The apprehension must of course be genuine and it must relate to the near future."

Mindful of the practical difficulties of using the power correctly and sensibly in domestic situations, Lord Justice Neill commented that:

> "… when exercising his power to prevent a breach of the peace a police officer should act with great care and discretion; this will be particularly important where the exercise of his power involves entering on private property contrary to the wishes of the owners or occupiers. The officer must satisfy himself that there is a real and imminent risk of a breach of the peace, because if the matter has to be tested in court thereafter there may be scrutiny not only of his belief at the time but also of the grounds for his belief."

Relying on the facts as established by the High Court, Lord Justice Neill considered that the police officers entered the applicant's house to prevent a breach of the peace and were reasonable in concluding that there was a danger of such a breach. The other judges, Lords Justices Hoffman and Waite agreed. Leave to appeal to the House of Lords was refused.

22. On 1 March 1994 the applicant applied to the House of Lords for leave to appeal against the Court of Appeal's decision of 3 February 1994. On 18 May 1994 the House of Lords refused the application.

II. RELEVANT DOMESTIC LAW

A. Statutory powers of entry

23. Section 17 of the 1984 Act sets out the primary circumstances in which a police constable may enter and search premises. According to section 17(1)(e), a police officer may enter any premises for the purposes of saving life or limb or preventing serious damage to property. Whilst section 17(5) abolishes all common-law rules under which a police officer previously had power to enter premises without warrant, section 17(6) provides:

> "Nothing in subsection (5) affects any power of entry to deal with or prevent a breach of the peace."

B. Breach of the peace

24. Breach of the peace – which does not constitute a criminal offence (*R. v. County Quarter Sessions Appeals Committee, ex parte Metropolitan Police Commissioner* [1948] 1 King's Bench Reports 260) – is a common-law concept dating back to the tenth century. However, as Lord Justice Watkins, giving judgment in the Court of Appeal in the case of *R. v. Howell* ([1982] 1 Queen's Bench Reports 416) remarked in January 1981:

> "A comprehensive definition of the term 'breach of the peace' has very rarely been formulated…" (p. 426)

He continued:

> "We are emboldened to say that there is likely to be a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance." (p. 427)

25. In October 1981, in a differently constituted Court of Appeal giving judgment in *R. v. Chief Constable of Devon and Cornwall, ex parte Central Electricity Generating Board* ([1982] Queen's Bench Reports 458), which concerned a protest against the construction of a nuclear power station, Lord Denning, Master of the Rolls, defined "breach of the peace" more broadly, as follows:

> "There is a breach of the peace whenever a person who is lawfully carrying out his work is unlawfully and physically prevented by another from doing it. He is entitled by law peacefully to go on with his work on his lawful occasions. If anyone unlawfully and physically obstructs the worker – by lying down or chaining himself to a rig or the like – he is guilty of a breach of the peace." (p. 471)

26. In a subsequent case before the Divisional Court (*Percy v. Director of Public Prosecutions* [1995] 1 Weekly Law Reports 1382), Mr Justice Collins followed *Howell,* rather than *ex parte Central Electricity Generating Board*, in holding that there must be a risk of violence before there could be a breach of the peace. However, it was not essential that the violence be perpetrated by the defendant, as long as it was established that the natural consequence of his behaviour would be to provoke violence in others:

> "The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and so some actual danger to the peace is established." (p. 1392)

27. In another case before the Divisional Court, *Nicol and Selvanayagam v. Director of Public Prosecutions* ([1996] Justice of the Peace Reports 155) Lord Justice Simon Brown stated:

> "… the court would surely not find a [breach of the peace] proved if any violence likely to have been provoked on the part of others would be not merely unlawful but wholly unreasonable – as of course, it would be if the defendant's conduct was not merely lawful but such as in no material way interfered with the other's rights. *A fortiori*, if the defendant was properly exercising his own basic rights, whether of assembly, demonstration or free speech." (p. 163)

C. Police right of entry to prevent a breach of the peace

28. The common-law power of the police to enter private property to prevent a breach of the peace, as preserved by section 17(6) of the 1984 Act, was defined by Lord Chief Justice Hewart in *Thomas v. Sawkins* cited above:

> "I think that there is quite sufficient ground for the proposition that it is part of the preventive power, and, therefore, part of the preventive duty, of the police, in cases where there are such reasonable grounds of apprehension as the justices have found here, to enter and remain on private premises. It goes without saying that the powers and duties of the police are directed, not to the interests of the police, but to the protection and welfare of the public. (p. 254)
>
> … I am not at all prepared to accept the doctrine that it is only where [a breach of the peace] has been, or is being, committed, that the police are entitled to enter and remain on private premises. On the contrary, it seems to me that a police officer has *ex virtute officii* full right so to act when he has reasonable ground for believing that [a breach of the peace] is imminent or is likely to be committed." (p. 255)

29. The continued existence of the common-law power of entry to prevent a breach of the peace and its applicability to circumstances of a domestic quarrel was recognised in *McGowan v. Chief Constable of Kingston Upon Hull* ([1968] Criminal Law Reports 34), where the Lord Chief Justice said:

> "Regardless of the invitation, there was sufficient [ground] to justify the police entering the house on the basis that they genuinely suspected a danger of breach of the peace occurring."

PROCEEDINGS BEFORE THE COMMISSION

30. In her application (no. 24755/94) to the Commission of 22 May 1994, Ms McLeod relied on Article 8 of the Convention and Article 1 of

Protocol No. 1, complaining that the entry of the police into her house on 3 October 1989 and the subsequent failure of the courts to grant her legal protection amounted to a violation of her right to respect for her home and private life and to the peaceful enjoyment of her possessions. She further alleged that there had been a violation of her right to a fair hearing under Article 6 of the Convention, since the House of Lords had refused to examine her appeal. Finally, she complained that her mother's rights under Articles 6 and 8 of the Convention had been violated.

31. On 26 June 1996 the Commission (First Chamber) declared admissible the complaints concerning the alleged interference with the applicant's home, private life and enjoyment of her possessions, and declared the remainder of the application inadmissible. In its report of 9 April 1997 (Article 31), it expressed the opinion that there had been no violation of Article 8 of the Convention (fourteen votes to two); and that there had been no violation of Article 1 of Protocol No. 1 (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

32. At the hearing on 18 May 1998 the Government, as they had done in their memorial, invited the Court to agree with the majority of the Commission that there had been no breach of Article 8 of the Convention in this case.

33. On the same occasion the applicant asked the Court to hold that there had been a violation of Article 8 of the Convention and to award her just satisfaction.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

34. The applicant submitted that the police officers' entry into her home and their failure to prevent her ex-husband's entry violated Article 8 of the Convention, which provides (as relevant):

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1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

> "1. Everyone has the right to respect for his private … life [and] his home …
>
> 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."

35. The Government contested these allegations, maintaining that the entry of the police into the applicant's home was "in accordance with the law" within the meaning of Article 8 § 2 of the Convention, and was proportionate to the aim of preventing disorder and crime. The Commission agreed with the Government.

A. Alleged interference with the applicant's right to respect for her private life and home

1. Existence of an interference

36. It was not disputed that the entry of the police into the applicant's home on 3 October 1989 constituted an interference with her right to respect for her private life and home. The Court sees no reason to hold otherwise.

2. Justification for the interference

37. Such interference breaches Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims set out in Article 8 § 2 and is, in addition, "necessary in a democratic society" to achieve the aim or aims in question.

(a) "In accordance with the law"

38. The applicant submitted that the common-law power of the police to enter private premises on the grounds of an anticipated breach of the peace was not "in accordance with the law" within the meaning of Article 8 § 2. In this regard she argued, first, that the meaning of the concept "breach of the peace" was insufficiently clear and precise and that, in particular, there was inconsistent jurisprudence as to the meaning of "breach of the peace". An element of apprehension by another was included in the definition of "breach of the peace", which made it difficult in many cases for an individual to foresee the consequences of his acts; the degree of imminence required was uncertain; and it was not clear who of one or more individuals involved in an incident would be held responsible for causing the breach of the peace. Secondly, she maintained that the scope of the discretionary

power of the police to enter private premises was not sufficiently clearly defined to provide protection from arbitrary interference.

39. The Government contested this allegation, maintaining that the interference with the applicant's rights was in accordance with the law. The common-law power of the police to enter private premises without a warrant to prevent a breach of the peace had been preserved by section 17(6) of the 1984 Act (see paragraph 23 above). This provision, which was unequivocal in its terms, reflected the rule laid down in *Thomas v. Sawkins* (see paragraph 28 above); a rule that was formulated with sufficient precision to enable persons – including the police – to regulate their conduct.

Furthermore, they stressed that there was no ambiguity in the power of the police to enter private premises to prevent a breach of the peace. If there had been, Parliament would have clarified the power when the common-law powers of the police to enter private premises were reviewed in connection with the 1984 Act.

40. The Commission considered that the rule in *Thomas v. Sawkins*, as recognised in *McGowan v. Chief Police Constable of Kingston Upon Hull* (see paragraph 29 above), had enabled the applicant reasonably to foresee that the police had had the right to enter and remain on her property to prevent a breach of the peace arising when her former husband collected his property from her home.

41. The Court recalls that the expression "in accordance with the law", within the meaning of Article 8 § 2, requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, amongst many others, the Margareta and Roger Andersson v. Sweden judgment of 25 February 1992, Series A no. 226-A, p. 25, § 75). However, those consequences need not be foreseeable with absolute certainty, since such certainty might give rise to excessive rigidity, and the law must be able to keep pace with changing circumstances (see, *mutatis mutandis*, the *Sunday Times* v. the United Kingdom (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49).

42. In this connection, the Court observes that the concept of breach of the peace has been clarified by the English courts over the last two decades, to the extent that it is now sufficiently established that a breach of the peace is committed only when an individual causes harm, or appears likely to cause harm, to persons or property, or acts in a manner the natural consequence of which would be to provoke violence in others (see paragraphs 24 to 27 above).

43. Furthermore, the English courts have recognised that the police have a duty to prevent a breach of the peace that they reasonably apprehend will occur and to stop a breach of the peace that is occurring. In the execution of this duty, the police have the power to enter into and remain on private property without the consent of the owner or occupier (see paragraphs 28 and 29 above). Despite the general abolition of common-law powers of entry without warrant, this power was preserved by section 17(6) of the 1984 Act (see paragraph 23 above).

44. When considering whether the national law was complied with, the Court recalls that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, as a recent authority, the Kopp v. Switzerland judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 541, § 59). In this regard, the Court notes that in its decision the Court of Appeal took into account the criticisms of the common-law power of the police to enter private premises to prevent a breach of the peace cited by the applicant in her memorial to the Court, and found that the common-law power was applicable in situations involving domestic disturbance (see paragraph 21 above).

45. In conclusion, the Court finds that the power of the police to enter private premises without a warrant to deal with or prevent a breach of the peace was defined with sufficient precision for the foreseeability criterion to be satisfied. The interference was, therefore, "in accordance with the law".

(b) Legitimate aim

46. The applicant contended that, while the prevention of crime or disorder might be the objective behind the existence of the power, it was not the aim of the interference that took place in the present case. She submitted that the term "prevention" should be interpreted narrowly and should not encompass a situation where police officers by their own actions caused a risk of disorder and then assumed powers of entry to prevent it.

47. The Government maintained that the purpose of the police officers' entry into the applicant's property was to prevent disorder or crime. In this regard, they drew attention to the fact that domestic strife was often the cause of considerable disorder and occasionally led to serious violence against persons or property. The Commission accepted this submission.

48. The Court is of the view that the aim of the power enabling police officers to enter private premises to prevent a breach of the peace is clearly a legitimate one for the purposes of Article 8, namely the prevention of disorder or crime, and there is nothing to suggest that it was applied in the present case for any other purpose.

(c) "Necessary in a democratic society"

49. The applicant contended that, since section 17(1)(e) of the 1984 Act enabled the police to enter private premises to save life or limb or prevent serious damage to property, the power of the police to enter private premises in circumstances other than when there was a risk of physical harm to persons or property was not "necessary in a democratic society".

Notwithstanding this contention she argued that, if the police chose to exercise their power of entry when there was no risk of physical injury or damage to property – which entailed a major infringement of the rights guaranteed under Article 8 of the Convention – the justification for the interference should be significant and indisputable. Furthermore, justification for the entry had to be made by reference to the degree of risk that existed at the time the police entered the property. In the present case, since there was no history of violence between the applicant and her ex-husband and the only person present at the house at the time of entry was her 74-year-old mother, the risk of harm was minimal or non-existent. Weighing this against the seriousness of the interference, the actions of the police could not be regarded as proportionate. In addition, they demonstrated such a lack of impartiality as to render the exercise of the powers disproportionate to the aim pursued.

50. The Government claimed that, because there was a clear pressing social need to prevent disorder or crime, the power of the police to enter private premises without permission to prevent a breach of the peace was "necessary in a democratic society". With regard to the present case, they submitted that the interference was proportionate to the legitimate aim pursued, as demonstrated by the fact that the visit to the applicant's home by her former husband to collect his possessions was made in the genuine, albeit mistaken, belief that she had agreed to the arrangement; the ex-husband's solicitors feared that a breach of the peace might occur because of the history of the court proceedings between their client and the applicant; the police officers attended the applicant's home not to assist in the removal of the property but to maintain the peace; they acted in a discreet and reasonable manner; and the applicant's conduct on her return did call for their intervention.

51. The Commission, placing emphasis on the risk of disturbance that might have arisen if the applicant's ex-husband and his party had gained access on their own, found that the measures taken by the police officers – who acted, in its opinion, with restraint throughout the incident – were not disproportionate to the legitimate aim pursued. Although the police officers had had limited possibilities of knowing the precise nature of private

relations between the couple, they were under a duty to take seriously an indication from one party that trouble might arise.

52. The Court recalls that, according to its established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued (see, *inter alia*, the Olsson v. Sweden (no. 1) judgment of 24 March 1988, Series A no. 130, pp. 31–32, § 67).

53. The Court's task accordingly consists in ascertaining whether, in the circumstances of the present case, the entry of the police into the applicant's home struck a fair balance between the relevant interests, namely the applicant's right to respect for her private life and home, on the one hand, and the prevention of disorder and crime, on the other.

54. The Court notes that on the morning of 3 October 1989, Mr McLeod's solicitors, knowing the long and acrimonious history of the divorce proceedings, contacted the police requesting their attendance in order to avoid a breach of the peace occurring while their client's property was being removed from the applicant's home. Two police officers were instructed to attend. Upon arriving at the applicant's home, the police officers were shown a copy of the list of property that was to be removed, but not the order accompanying it (see paragraph 12 above).

One of the police officers knocked at the door of the house and was told by the applicant's mother that the applicant was not at home. Mr McLeod and his party entered the house and began removing the property. The police officers also entered the house, but did not participate in the removal of the property. One of them, however, checked that only items mentioned on the list were removed. When the applicant returned home, she became angry and demanded that the property that had been loaded into the van be put back into the house. One of the police officers intervened, insisting that the van be driven away and that any dispute should be left to the parties' solicitors (see paragraphs 13 to 15 above).

55. The Court considers that, since Mr McLeod's solicitors genuinely believed that a breach of the peace might occur when their client removed his property from the former matrimonial home, the police could not be faulted for responding to their request for assistance. In this regard, it notes that the domestic courts accepted that a situation that might begin as a domestic quarrel could develop into a breach of the peace (see paragraph 18 above).

56. However, the Court observes that, notwithstanding the facts that the police were contacted in advance by Mr McLeod's solicitors and that the solicitor's clerk offered to return to his office and collect the court order (see paragraph 12 above), the police did not take any steps to verify whether Mr McLeod was entitled to enter her home on 3 October 1989 and remove his property. Sight of the court order would have indicated that it was for

the applicant to deliver the property, and not for her former husband to collect it, and moreover that she had three more days in which to do so (see paragraph 11 above). Admittedly, the court order would not have enabled the police officers to ascertain the correctness of Mr McLeod's genuinely held belief that an agreement had been made between himself and his ex-wife allowing him to remove his property from the former matrimonial home on 3 October 1989 – a belief that was communicated to the police officers upon their arrival (see paragraph 12 above). Nonetheless, given the circumstances of the interference, and the fact that the applicant was not present and that her mother lacked any knowledge of the agreement (see paragraph 13 above), the police should not have taken it for granted that an agreement had been reached superseding the relevant parts of the court order.

57. The Court considers further that, upon being informed that the applicant was not present, the police officers should not have entered her house, as it should have been clear to them that there was little or no risk of disorder or crime occurring. It notes in this regard that the police officers remained outside the property for some of the time, suggesting a belief on their part that a breach of the peace was not likely to occur in the absence of the applicant (see paragraph 14 above). The fact that an altercation did occur upon her return (see paragraph 15 above) is, in its opinion, immaterial in ascertaining whether the police officers were justified in entering the property initially.

58. For the above reasons, the Court finds that the means employed by the police officers were disproportionate to the legitimate aim pursued. Accordingly, there has been a violation of Article 8 of the Convention.

B. Alleged failure to comply with a positive obligation

59. The applicant argued that the respondent State had failed in its obligation to protect her right to respect for her home from unlawful interference by other private individuals. In particular, the police officers had facilitated the unlawful entry of her ex-husband, his siblings and the solicitors' clerk; they had failed to ascertain whether her ex-husband and the others had been entitled to enter her house; they had failed to take any steps to prevent them from damaging the house and committing trespass to goods; and they had failed to provide proper protection to her mother.

60. At the hearing before the Court, the Delegate of the Commission submitted that in light of the fact that the applicant had been awarded substantial damages against her former husband and the persons accompanying him in connection with the trespass (see paragraph 19 above), it was questionable whether she could still claim to be a victim in

this respect. Notwithstanding this submission, the Delegate was of the opinion that a number of difficulties would arise if the State was required to protect persons against trespass by private individuals not only *ex post facto* but also in advance. Accordingly, she invited the Court to address this case solely on the basis of whether there had been an interference with the applicant's right to respect for her private life and home.

The Government agreed with the Delegate's submission.

61. Having regard to its finding that the entry of the police officers into the applicant's home was not justified under Article 8 § 2 of the Convention (see paragraph 58 above), the Court does not consider it necessary to examine further this complaint.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

62. Before the Commission the applicant alleged that the police and the courts had failed to show respect for her right to peaceful enjoyment of her possessions in breach of Article 1 of Protocol No. 1. However, she did not maintain this complaint in the present proceedings and the Court sees no reason to examine it of its own motion (see, as a recent authority, the Incal v. Turkey judgment of 9 June 1998, *Reports* 1998-IV, p. 1574, § 75).

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

63. The applicant requested the Court to grant her just satisfaction under Article 50 of the Convention, which provides as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

64. In her memorial the applicant requested the Court to award her compensation for non-pecuniary damage. However, at the hearing she informed the Court that, if it were to find a violation of the Convention, she would be prepared to forego this claim.

65. The Court considers that, in the circumstances, a finding of a violation of Article 8 of the Convention constitutes in itself sufficient just satisfaction.

B. Costs and expenses

66. The applicant claimed her personal costs and expenses arising from the proceedings before the domestic courts and the Strasbourg institutions which amounted to 5,523.39 pounds sterling (GBP): Ms McLeod had represented herself before the domestic courts and the Commission, for which she asked to be compensated at the rate specified under domestic law for litigants in person, and had incurred travel and other expenses amounting to GBP 1,577.64. In addition, she claimed solicitors' costs of GBP 3,829.21 (inclusive of value-added tax "VAT") and counsels' fees of GBP 15,275 (inclusive of VAT).

67. At the hearing, the Government submitted that it would not be proper to compensate the applicant for the time spent preparing her case at domestic level and before the Commission. In addition, they suggested that the amount claimed in respect of counsel's fees was excessive.

68. The Delegate of the Commission had no comments to make on the amounts claimed.

69. Following the criteria established in its case-law, the Court is unable to compensate the applicant for the time she spent working on the case (see, amongst other authorities, the Robins v. the United Kingdom judgment of 23 September 1997, *Reports* 1997-V, p. 1812, § 44). Deciding on an equitable basis and having regard to the details of the claims submitted by her, it awards the applicant a total of GBP 15,000 in respect both of disbursements necessarily and reasonably incurred by herself and solicitors' costs and counsels' fees.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* by seven votes to two that there has been a violation of Article 8 of the Convention;

2. *Holds* unanimously that it is not necessary to examine the applicant's complaint under Article 1 of Protocol No. 1;

3. *Holds* unanimously
(a) that the finding of violation is sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;
(b) that the respondent State is to pay to the applicant, within three months, in respect of costs and expenses, 15,000 (fifteen thousand) pounds sterling;
(c) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 1998.

Signed: THÓR VILHJÁLMSSON
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the joint partly dissenting opinion of Sir John Freeland and Mr Mifsud Bonnici is annexed to this judgment.

Initialled: Th. V.
Initialled: H. P.

JOINT PARTLY DISSENTING OPINION OF JUDGES Sir John FREELAND AND MIFSUD BONNICI

1. We agree that the aim of the power enabling police officers to enter private premises to prevent a breach of the peace is clearly a legitimate one for the purposes of Article 8 of the Convention, namely the prevention of disorder or crime, and that there is nothing to suggest that it was applied in the present case for any other purpose (see paragraph 48 of the judgment). Where we differ from the majority, however, is on the question whether in this case the entry of the police officers into the applicant's home was proportionate to the legitimate aim pursued.

2. The proportionality of the actions of the two police officers must be judged not with the benefit of hindsight but on the basis of the information available to them on the day in question – 3 October 1989. They had been told to go to the house on the information of a solicitor that there might be trouble. As Tuckey J said in dismissing the subsequent action against them, after having heard all the evidence, "The history of the matter makes it clear … that the solicitor's fears were well-founded. If [the applicant] had been there when her ex-husband's party arrived, I have no doubt that the police constables' role as peace-keepers would have been required" (see the quotation at paragraph 18 of the present judgment). The judge went on, after saying that he had been told by one of the police officers that it was his experience that breaches of the peace did occur at events such as these, "I have no doubt that he is right about that. The police constables were fully entitled, therefore, in my judgment to fear that a breach of the peace might occur on this occasion. Although Ms McLeod was not there when they arrived, they were not to know when she might return, and so they were entitled to remain on the premises … to see the thing through. As it turned out, their intervention was required when Ms McLeod returned and they then clearly acted with the intention of avoiding a breach of the peace…"

3. The judgment of the Court of Appeal was given by Lord Justice Neill, with whom the other two members of the court agreed. After fully examining the relevant law, and on the basis of the facts as established before Tuckey J he saw no basis for upsetting the decision of the court below on those facts.

4. In reaching the conclusion that the means employed by the police officers were disproportionate to the legitimate aim pursued, the majority attach importance to the circumstance that "the police did not take any steps to verify whether the applicant's former husband was entitled to enter her

home on 3 October 1989 and remove his property" (see paragraph 56 of the judgment). The police officers had, however, been informed, on their arrival at the scene, of the former husband's belief (which Tuckey J found to have been genuinely held) that there was an agreement between him and the applicant for the removal of the property that day. Given the clear intention of the former husband's party to proceed with the removal on the basis of that belief (even if, as subsequently transpired, it turned out to have been mistaken), and given that the – quite different – basis for the actions of the police officers was the prevention of a breach of the peace, it was not incumbent on the latter to involve themselves in possibly disputed issues of private rights. Their purpose was, in short, to prevent physical trouble from arising from a course of action on which the former husband's party were, in the conviction of entitlement, set. Any resulting disputes over private rights could be resolved subsequently – as indeed they were, notably in the proceedings against the former husband and his party by which the applicant obtained substantial damages for trespass.

We would add that, as a matter of common knowledge, the intensity and bitterness of domestic quarrels tend all too often to escalate into disorder or violence, particularly where the division of property is involved; and it is by no means unusual for British police to be called on to intervene to prevent such escalation.

5. The majority also maintain, as a further support for a conclusion of disproportionality, "that upon being informed that the applicant was not present the police officers should not have entered the house, as it should have been clear to them that there was little or no risk of disorder or crime occurring. It notes in this regard that the police officers remained outside the property for some of the time thus suggesting a belief on their part that a breach of the peace was not likely to occur in the absence of the applicant" (see paragraph 57 of the judgment). This, however, gives insufficient weight to the fact that, as Tuckey J found, although Ms McLeod was not there when the police officers arrived, they were not to know when she might return. Given that fact, it was not unreasonable (or disproportionate) for them to enter the house initially, when an unexpected return on her part might well be most likely to give rise to trouble, and, subsequently, to remain outside for part of the time as by then the best method of intervening to prevent a breach of the peace should she return while the removal operation was in progress.

6. In the light of the findings of the domestic courts – in particular, those of Tuckey J, who had the advantage of hearing the witnesses – the actions of the police officers were, in our view, proportionate to the legitimate aim pursued and corresponded to a pressing social need. In addition to the considerations touched on above, their presence in the house was, as they

made clear, not to assist in the removal of the former husband's property but to maintain the peace; they remained there, acting discreetly and with restraint throughout, until there was no longer any threat of a breach of the peace; and when the applicant eventually returned, furious (in Tuckey J's description) and intent on stopping her ex-husband from driving away with his property, their intervention in all likelihood prevented a breach of the peace.

7. We are therefore unable to join in the conclusion that the means employed by the police officers were disproportionate to the legitimate aim pursued and that there has accordingly been a violation of Article 8 of the Convention (see paragraph 58 of the judgment).

8. Nor are we satisfied that the positive obligation on a State under Article 8 could reasonably be regarded as extending to the prevention in advance of trespass by private individuals in circumstances such as those of the present case. We are therefore not persuaded by the arguments of the applicant on this aspect (see paragraph 59 of the judgment), even if, after the award to her of damages for trespass by the former husband and his party, she could still validly claim to be a victim in this respect – a point on which we consider it unnecessary to express a view.

9. For the reasons indicated above, we voted against the finding that there had been a breach of Article 8 of the Convention in this case.