



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

COURT (PLENARY)

**CASE OF WEEKS v. THE UNITED KINGDOM**

*(Application no. 9787/82)*

JUDGMENT

STRASBOURG

2 March 1987

**In the Weeks case\*,**

The European Court of Human Rights, taking its decision in plenary session in pursuance of Rule 50 of the Rules of Court and composed of the the following judges:

Mr. R. RYSSDAL, *President*,  
Mr. J. CREMONA,  
Mr. Thór VILHJÁLMSSON,  
Mrs. D. BINDSCHEDLER-ROBERT,  
Mr. G. LAGERGREN,  
Mr. F. GÖLCÜKLÜ,  
Mr. F. MATSCHER,  
Mr. J. PINHEIRO FARINHA,  
Mr. L.-E. PETTITI,  
Mr. B. WALSH,  
Sir Vincent EVANS,  
Mr. R. MACDONALD,  
Mr. C. RUSSO,  
Mr. R. BERNHARDT,  
Mr. J. GERSING,  
Mr. A. SPIELMANN,  
Mr. J. DE MEYER,

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

Having deliberated in private on 25 September 1986 and 27 January 1987,

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

## PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 14 March 1985, within the period of three months laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The case originated in an application (no. 9787/82) against the United Kingdom of Great Britain

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\* Note by the Registrar: The case is numbered 3/1985/89/136. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

and Northern Ireland lodged with the Commission on 6 April 1982 under Article 25 (art. 25) by a British citizen, Mr. Robert Malcolm Weeks.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under paragraphs 1 and 4 of Article 5 (art. 5-1, art. 5-4).

2. In response to the inquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings pending before the Court and designated the lawyer who would represent him (Rule 30).

3. The Chamber of seven judges to be constituted included, as *ex officio* members, Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the then President of the Court (Rule 21 para. 3 (b)). On 27 March 1985, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. J. Cremona, Mr. Thór Vilhjálmsson, Mr. D. Evrigenis, Mr. E. García de Enterría and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr. F. Matscher, Mr. R. Bernhardt and Mr. G. Lagergren, substitute judges, replaced respectively Mr. Cremona, who was prevented from taking part in the Chamber's consideration of the case, Mr. Evrigenis, who had died on 27 January 1986, and Mr. García de Enterría, whose term of office as judge had expired before the opening of the oral proceedings (Rules 2 para. 3, 22 para. 1 and 24 para. 1).

4. Mr. Wiarda assumed the office of President of the Chamber (Rule 21 para. 5). He ascertained, through the Registrar, the views of the Agent of the United Kingdom Government ("the Government"), the Delegate of the Commission and the lawyer for the applicant regarding the need for a written procedure (Rule 37 para. 1). Thereafter, in accordance with the Orders and directions of the President of the Chamber, the following documents were lodged at the registry:

- on 11 July, 9 and 29 August 1985, the memorial of the applicant and his claims under Article 50 (art. 50) of the Convention;
- on 19 July 1985, the memorial of the Government.

The Secretary to the Commission had informed the Registrar on 25 July 1985 that the Delegate did not wish to file a memorial in reply.

5. On 13 December 1985, after consulting, through the Registrar, the Agent of the Government, the Delegate of the Commission and the lawyer for the applicant, the President directed that the oral proceedings should open on 17 March 1986 (Rule 38).

6. Following the expiry of his term of office as judge (20 January 1986), Mr. Wiarda was replaced as President of the Chamber by Mr. R. Ryssdal,

who had in the meantime been elected President of the Court (Rule 2 para. 3 and Rule 21 paras. 3 (b) and 5).

7. The hearing was held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately prior to its opening, the Chamber had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mr. M. EATON, Legal Counsellor

at the Foreign and Commonwealth Office,

*Agent,*

Sir Patrick MAYHEW, Q.C., Solicitor General,

Mr. A. MOSES, Barrister-at-Law,

*Counsel,*

Mr. R. GARDNER, Law Officers' Department,

Mr. C. OSBORNE, Home Office,

*Advisers;*

- for the Commission

Mr. E. BUSUTIL,

*Delegate;*

- for the applicant

Mr. P. ASHMAN, Legal Officer

of JUSTICE (British section of the International  
Commission of Jurists),

*Counsel.*

The Court heard addresses by Sir Patrick Mayhew for the Government, by Mr. Busuttil for the Commission and by Mr. Ashman for the applicant, as well as their replies to its questions.

8. Pursuant to a decision taken by the Chamber on 26 May 1986, two questions in writing were put to the Government on 5 June 1986. The answers of the Government and the comments of the applicant on these answers were lodged at the registry on 11 July and 13 August 1986, respectively.

9. Following deliberations held on 19 and 21 March and 26 May 1986, the Chamber relinquished jurisdiction in favour of the plenary Court (Rule 50 of the Rules of Court).

Having taken note of the agreement of the Agent of the Government and the concurring opinion of the Delegate of the Commission and of the applicant, the Court decided on 25 September 1986 that the consideration of the case should continue without resumption of the oral proceedings (Rule 26).

## AS TO THE FACTS

### I. PARTICULAR CIRCUMSTANCES OF THE CASE

10. The applicant, Mr. Robert Malcolm Weeks, is a British citizen born in 1949.

11. On 6 December 1966, then aged 17, he pleaded guilty at Hampshire Assizes to armed robbery, assaulting a police officer and being in the unlawful possession of a firearm. In respect of the first offence, he was sentenced to life imprisonment; for the second and third offences he received 2 and 3 years' imprisonment respectively, all sentences to run concurrently.

12. The applicant had committed the robbery on 18 November 1966 when he entered a pet shop in Gosport, Hampshire, with a starting pistol loaded with blank cartridges, pointed it at the owner and told her to hand over the till. He stole a sum of 35 pence which was later found on the shop floor.

Later that same day, he telephoned Gosport police station to say that he would give himself up. He was apprehended in the High Street by two police officers. He took the starting pistol from his pocket and it went off. In the ensuing struggle, two more blanks were fired, one of which caused a powder burn to the wrist of one of the police officers. It emerged that the applicant had committed the robbery because he wanted to pay back £3 which he owed his mother, who had told him that morning to find lodgings elsewhere.

13. At the trial, a prison medical officer testified that he could find no evidence of mental instability which would justify sending the applicant to a mental institution. However, a probation report, which had been prepared by a probation officer who had supervised the applicant for a period of two years, characterised him as being susceptible to fluctuation of mood and emotionally immature, and as having a morbid interest in the literature of violence and a fascination for guns. The report also stated that he had taken to drinking heavily from time to time and that he had a high potential for aggression. No psychiatric report was available to the court.

14. In passing sentence, Mr. Justice Thesiger said:

"... [T]he facts of the offence and the evidence of the character and disposition of the accused ... satisfy me that ... he is a very dangerous young man. ... I think an indeterminate sentence is the right sentence for somebody of this age, of this character and disposition, who is attracted to this form of conduct. That leaves the matter with the Secretary of State who can release him if and when those who have been watching him and examining him believe that with the passage of years he has become responsible. It may not take long. Or the change may not occur for a long time - I do not know how it will work out. ... So far as the first count of the indictment is concerned, I think the right conclusion, terrible though it may seem, is that I pass the sentence that the law authorises me to pass for robbery and for assault with intent to rob with arms, that is life imprisonment. The Secretary of State can act if and when he thinks it is safe to act."

15. Mr. Weeks applied for leave to appeal against the sentence to the Court of Appeal (Criminal Division) which, on 6 April 1967, dismissed the

application. Lord Justice Salmon upheld the view of the sentencing judge in the following terms:

"Now at the trial it appears that the prison doctor said that there was no evidence of any mental disorder then apparent which would have justified his detention in a mental institution. The Learned Judge, quite rightly in the view of this Court, took the view that this was not a case for borstal because borstal for one reason would not be a sufficiently secure place to send such a dangerous young man. The Judge was therefore - since he could not send him to a mental institution for lack of evidence - faced with a difficult decision on whether he should give him what he did, namely life imprisonment, or sentence him to some long term, some definite term of imprisonment for a number of years. As he was at pains to point out, he in mercy really to the boy took the former course. Now life imprisonment in this case at any rate means an indeterminate sentence. If when he gets to prison it then appears after he has been there some time that there are grounds for transferring him to a mental institution for treatment, there are ample powers under the Act which will enable the Home Secretary to do so. Moreover, as soon as it becomes apparent, and it is to be hoped that it may not be long, but one cannot tell, that it is safe from the public point of view and from his own point of view to do so, this boy will be released. At first sight a sentence of life imprisonment, particularly having regard to his age, sounds terrible, but when the factors to which reference has been made are considered it will be seen that this is really in mercy to the boy and will perhaps enable him to be released much sooner than if a long term of imprisonment had been imposed, which was the only other alternative."

16. In 1970, the applicant was transferred to Grendon Underwood, a psychiatric prison. However, it was found that he did not respond to the regime and after six months' treatment, he was transferred back to Albany Prison until his release on licence in March 1976. He had originally been given a release date for April 1975 but had absconded from a prison hostel during a probationary period. He later surrendered to the police, but on his return to prison was violent and refused food for a time. On the recommendation of the Parole Board, a further release date was set for October 1975. However, this date was again rescinded when the applicant returned to a prison hostel drunk, tried to escape while being escorted to the main prison and was recaptured only after a chase and a violent struggle. His case was once more referred to the Parole Board and, on its recommendation, he was released on licence by decision of the Secretary of State for the Home Department ("the Home Secretary") on 31 March 1976.

17. On 12 January 1977, the applicant pleaded guilty at Portsmouth Magistrates' Court to burglary and driving while uninsured and without a licence. It appears he had broken into a beach hut and stolen a pullover. He was given a conditional discharge for one year and fined. The probation report described the applicant as having frequent disagreements with members of his family, with whom he lived in turn, and drinking to excess in times of stress. Following this incident, a letter warning that his licence could be revoked was issued by the Home Office and served on him on 19 April 1977.

At the beginning of June 1977, the applicant was given accommodation and employment as a labourer at Aylesford Priory. On 21 June he was arrested, having damaged a car in the village while driving a dumper truck without permission. He was granted bail. Two days later he visited a public house and became drunk and abusive. He was escorted by police back to the Priory where he became agitated, particularly at the prospect of being sent back to prison again, and produced an air pistol, threatening to commit suicide. A priest in the Priory remonstrated with him, the gun was fired and a lead pellet hit the ceiling. Later that day he was found to be very drunk and in possession of a quantity of bottles of spirits which had been stolen from a store. He was arrested and taken to the police station where he became abusive and violent and during the night tried to hang himself. Following his arrest, he was remanded in custody by West Malling Magistrates' Court.

18. On 30 June 1977, whilst Mr. Weeks was still in custody on remand, the Home Secretary ordered that his licence be revoked (section 62(2) of the Criminal Justice Act 1967, hereafter referred to as "the 1967 Act" - see paragraph 26 below). His case was referred to the Parole Board (section 62(4) of the Act - *ibid.*), which decided to defer consideration of his case until the outcome of his appearance in court, in connection with the above offences, was known.

19. On 3 October 1977, he was convicted by the Crown Court at Maidstone on charges of taking a dumper truck for his own use, being in possession of an air pistol as a prohibited person, theft of some alcohol and damaging a police blanket. He was given a conditional discharge for two years by a judge (Judge Streeter) assisted by two lay magistrates. Judge Streeter indicated that he did not consider that the applicant's case was "a typical case of someone given a sentence such as a life sentence, released on parole and then reverting straight into crime, reverting back to usual or true colours". He then left it to the Home Office to consider whether to release the applicant once more on parole, with the suggestion that he be allowed his liberty again. Judge Streeter himself had no competence to restore the applicant's licence or to order release, although he could have revoked the licence had it still been in force (section 62(7) of the 1967 Act - see paragraph 26 below).

20. The applicant's case was considered by the Parole Board in December 1977. The Board took the view that the applicant was still a danger to himself and to the public and confirmed his recall to prison. It recommended that the case be referred to the Local Review Committee, the first stage of a formal review by the Parole Board (see paragraph 29 below), in December 1978.

The Parole Board reviewed the case again in May 1979, when it recommended that he be released on licence once more. The Home Secretary, after consultation with the Lord Chief Justice and the trial judge,

did not accept the Parole Board's recommendation and decided that the applicant should be transferred to an open prison. In November 1979, he absconded from the open prison to Spain, but surrendered himself to the police in April 1980. In May 1981, the Parole Board recommended that he be released on licence as soon as resettlement arrangements could be made. The Home Secretary accepted this recommendation and decided upon a provisional release date of February 1982, subject to pre-release employment at Maidstone Prison Hostel. However, in October 1981, when in a drunken and agitated state, he was involved in a violent struggle with the hostel wardens during which one officer was injured on the thumb with a knife. On 28 October 1981, he was found guilty at Maidstone Magistrates' Court of the offence of malicious wounding and sentenced to three months' imprisonment.

In December 1981, the case was again referred to the Parole Board, which recommended that preparation should be made for the applicant to be released directly from prison to a hostel. He was released on licence on 18 October 1982. As in the case of every life licensee, his licence included conditions requiring him, inter alia, to place himself under the supervision of a nominated probation officer; to keep in touch with his supervising officer in accordance with that officer's instructions; to reside only where approved by his supervising officer; and not to travel outside Great Britain without the prior permission of his supervising officer.

21. On 14 June 1983, at Maidstone Magistrates' Court, the applicant pleaded guilty to driving a motorcycle whilst unfit through drink and driving without insurance. He was fined a total of £110 and disqualified from driving for one year. On 28 July, at Maidstone Crown Court, he pleaded guilty to the charge of being in unlawful possession of a shotgun. He was sentenced to six months' imprisonment suspended for two years. On 3 August, the police reported that he had been apprehended whilst driving in North London and charged with a number of motoring offences including fraudulent use of a road fund licence and driving whilst disqualified.

The case was referred to the Parole Board for its consideration. On 16 September 1983, the Board decided not to recommend the revocation of the applicant's licence but asked for a letter to be sent to his supervising officer (and to be shown to the applicant) saying that the Board was aware of his offences and asking to be notified if any further cause for concern was shown. In November, the applicant wrote to the Home Office acknowledging his irresponsible behaviour and agreeing to heed the Parole Board's warning.

On 9 March 1984, at Acton Crown Court, he pleaded guilty to the fraudulent use of an excise licence and driving whilst disqualified and was fined a total of £300.

22. In June 1984, the Probation Service reported that the applicant was out of touch with his supervising officer, had vacated his flat and was



believed to have gone abroad. He had in fact moved his residence to France. The case was referred to the Parole Board which, on 5 October, recommended that his licence should be revoked on the ground that he was in breach of its conditions. The Board's recommendation was accepted by the Secretary of State and the licence was revoked on 13 November.

He was arrested by the police on 7 April 1985, having returned to England from France to visit his family.

23. Following consideration by the Parole Board of his representations with respect to his recall (section 62(3) of the 1967 Act - see paragraph 26 below), Mr. Weeks was again released on licence on 26 September 1985. He subsequently failed to keep appointments with his supervisory probation officer and was found to have left his lodgings, his whereabouts being unknown. In the light of these facts the Parole Board Board recommended on 7 February 1986 that his licence be revoked on the same ground as in 1984. The Home Secretary acted on this recommendation on 13 March 1986. As at 27 January 1987, the applicant was still at large, having once more moved his residence to France.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

24. By virtue of section 23(1) of the Larceny Act 1916, the maximum penalty for robbery with violence was imprisonment for life. This was the provision in force at the time of the applicant's conviction in 1966. It has now been replaced by section 8(2) of the Theft Act 1968, which came into force on 1 January 1969. Between that date and 31 December 1984, of the 54,580 persons convicted of robbery only 17 have been sentenced to life imprisonment (Hansard, House of Commons, vol. 90, no. 43, 24 January 1986, col. 325 - written answer by the Secretary of State for the Home Department).

There is no definitive statement, statutory or otherwise, as to the principles governing the imposition of life sentences in the United Kingdom. However, certain guidelines have from time to time been given in judgments of the Court of Appeal. Broadly speaking, according to these guidelines, apart from such crimes as murder where a life sentence is mandatory, life sentences should be reserved for exceptional cases, for example (a) where the offence committed is in itself grave enough to require a very long sentence; (b) where it appears from the nature of the offence or from the defendant's history that he is a person of unstable character likely to commit such offences in the future. In relation to the latter category, the Court of Appeal has stated that a sentence of life imprisonment should not be imposed unless there is clear evidence of mental instability (as opposed to mental disorder) which indicates that the person is likely to be a danger to the public.

25. At the time of Mr. Weeks' conviction in 1966, the relevant statutory provision governing the release on licence and recall to prison of persons serving life sentences was section 27 of the Prison Act 1952, which read:

"27. (1) The Secretary of State may at any time if he thinks fit release on licence a person serving a term of imprisonment for life subject to compliance with such conditions, if any, as the Secretary of State may from time to time determine.

(2) The Secretary of State may at any time by order recall to prison a person released on licence under this section, but without prejudice to the power of the Secretary of State to release him on licence again; and where any person is so recalled his licence shall cease to have effect and he shall, if at large, be deemed to be unlawfully at large."

This provision was qualified by section 2 of the Murder (Abolition of Death Penalty) Act 1965 which provided that no person convicted of murder could be released under section 27 of the 1952 Act unless the Home Secretary had prior to release consulted the Lord Chief Justice and, if available, the trial judge.

26. A new system was introduced by sections 61 and 62 of the Criminal Justice Act 1967 ("the 1967 Act"):

"61. (1) The Secretary of State may, if recommended to do so by the Parole Board, release on licence a person serving a sentence of imprisonment for life or a person detained under section 53 of the Children and Young Persons Act 1933 (young offenders convicted of grave crimes), but shall not do so in the case of a person sentenced to imprisonment for life or to detention during Her Majesty's pleasure or for life except after consultation with the Lord Chief Justice of England together with the trial judge if available.

...

62. (1) Where the Parole Board recommends the recall of any person who is subject to a licence under section 60 or 61 of this Act, the Secretary of State may revoke that person's licence and recall him to prison.

(2) The Secretary of State may revoke the licence of any such person and recall him as aforesaid without consulting the Board, where it appears to him that it is expedient in the public interest to recall that person before such consultation is practicable.

(3) A person recalled to prison under the foregoing provisions of this section may make representations in writing with respect to his recall and shall on return to prison be informed of the reasons for his recall and of his right to make such representations.

(4) The Secretary of State shall refer to the Board the case of a person recalled under subsection (1) of this section who makes representations under the last foregoing subsection and shall in any event so refer the case of a person returned to prison after being recalled under subsection (2) of this section.

(5) Where the Board recommends the immediate release on licence of a person whose case is referred to it under this section, the Secretary of State shall give effect to the recommendation, and where it is necessary for that purpose to release that person

under subsection (1) of the last foregoing section, the Secretary of State shall do so without the consultation required by that subsection.

...

(7) If a person subject to a licence under section 60 or 61 of this Act is convicted on indictment of an offence punishable on indictment with imprisonment ..., the court by which he is convicted ... may, whether or not it passes any other sentence on him, revoke the licence.

...

(9) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence, and, if at large, shall be deemed to be unlawfully at large."

27. Once an offender is sentenced to life imprisonment, then, subject to any variation of the sentence by the sentencing court upon reconsideration within 28 days or to variation of it by the Court of Appeal, he may be detained by virtue of the original order of the court in prison for the rest of his life. A sentence of life imprisonment can never be altered, substituted or terminated, save if there is a free pardon or an exercise of the Royal Prerogative remitting the remainder of the sentence. Such use of the prerogative power could be contemplated only in the most exceptional circumstances, as it would have the effect of overriding the decision of the court; it has not been considered in Mr. Weeks' case. As far as offenders sentenced to life imprisonment are concerned, any release ordered by the Home Secretary under the 1967 Act is always conditional and can never become unconditional.

28. Relevant provisions concerning the Parole Board are also contained in section 59 of the 1967 Act:

"59. (1) For the purposes of exercising the functions conferred on it by this part of this Act as respects England and Wales there shall be a body known as the Parole Board ... consisting of a chairman and not less than four other members appointed by the Secretary of State.

...

(3) It shall be the duty of the Board to advise the Secretary of State with respect to:

(a) the release on licence under section 60(1) or 61, and the recall under section 62, of this Act of persons whose cases have been referred to the Board by the Secretary of State;

(b) the conditions of such licences and the variation or cancellation of such conditions; and

(c) any other matter so referred which is connected with the release or recall of persons to whom the said section 60 or 61 applies.

(4) The following provisions shall have effect with respect to the proceedings of the Board on any case referred to it, that is to say:

(a) the Board shall deal with the case on consideration of any documents given to it by the Secretary of State and of any reports it has called for and any information whether oral or in writing that it has obtained; and

(b) if in any particular case the Board thinks it is necessary to interview the person to whom the case relates before reaching a decision, the Board may request one of its members to interview him and shall take into account the report of that interview by that member; ...

(5) The documents to be given by the Secretary of State to the Board under the last foregoing subsection shall include:

(a) where the case referred to the Board is one of release under section 60 or 61 of this Act, any written representations made by the person to whom the case relates in connection with or since his last interview in accordance with rules under the next following subsection;

(b) where the case so referred relates to a person recalled under section 62 of this Act, any written representations made under that section.

..."

As to the constitution of the Parole Board, Schedule 2 to the 1967 Act further provides:

"1. The Parole Board shall include among its members:

(a) a person who holds or has held judicial office;

(b) a registered medical practitioner who is a psychiatrist;

(c) a person appearing to the Secretary of State to have knowledge and experience of the supervision or aftercare of discharged prisoners; and

(d) a person appearing to the Secretary of State to have made a study of the causes of delinquency or the treatment of offenders."

The Parole Board always counts among its members three High Court judges, three circuit judges and a recorder. Cases referred to the Board may be dealt with by three or more members of the Board (Parole Board Rules 1967). In practice, the Board sits in small panels, each of which in the case of life prisoners includes a High Court judge and a psychiatrist. The judges on the Board are appointed by the Home Secretary (section 59(1) of the 1967 Act) after consultation with the Lord Chief Justice.

29. A recalled prisoner, as well as being entitled to make written representations to the Parole Board under section 62(3) of the 1967 Act and possibly being interviewed by a member of the Board under section 59(4)(b) (see paragraphs 26 and 28 above), also has the opportunity of

making oral representations to a member of the Local Review Committee. The prisoner may seek legal advice in preparing his representations to the Parole Board and the Local Review Committee.

The Local Review Committee is a body independent of the Parole Board, and is constituted by way of statutory instrument. It has the duty of reviewing the cases of, amongst others, life prisoners and of reporting to the Home Secretary on their suitability for release on licence (section 59(6) of the 1967 Act). The Local Review Committee rules provide that there must be a Local Review Committee for every prison, consisting of a minimum of five members, not less than two of whom must be members of the general public. In every case of a life prisoner who is recalled, it is one of the two independent members of the Local Review Committee who will interview the prisoner, and the prisoner has the right to make oral representations to him.

Furthermore, the United Kingdom courts have made it clear that, for the purposes of section 62(3), the prisoner must be furnished with full and sufficient reasons for his recall in order to enable him to make sensible representations to the Parole Board (judgment of the Court of Appeal in *Gunnell v. The Chairman of the Parole Board and the Secretary of State for Home Affairs*, 30 October 1984; judgment of the High Court in *R v. The Parole Board and the Secretary of State for the Home Department, ex parte Wilson*, 20 March 1985).

There is no entitlement to an oral hearing before the full Board or the full local Review Committee.

30. Where the remedy of judicial review of administrative action lies, the Divisional Court of the High Court will quash decisions of an administrative authority if those decisions are taken in breach of the relevant statutory requirements or if the decisions are otherwise tainted by illegality, irrationality or procedural impropriety. The scope of judicial review was explained as follows by Lord Diplock in his speech in the case of *Council of Civil Service Unions v. Minister for the Civil Service* ([1984] 3 All England Law Reports 935 at 950-951):

"... Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is *par excellence* a justiciable question to be

decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* 1947 2 All England Law Reports 680, 1948 1 King's Bench Reports 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

...

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

..."

31. According to the Government, a decision of the Parole Board or of the Home Secretary which violates any of those requirements may be quashed by the courts. Thus, in two recent cases, the courts have examined, under the head of procedural impropriety, whether adequate reasons for recall were given for the purposes of section 62(3) of the 1967 Act and have, in one case, quashed on that ground a decision of the Parole Board refusing to recommend release from prison on licence pursuant to its powers under section 62(5) of the 1967 Act (see respectively the *Gunnell* and *Wilson* cases - paragraphs 26 and 29 above). In the *Gunnell* case, the Court of Appeal also considered the extent to which the rules of natural justice apply to proceedings before the Parole Board. Lord Justice Eveleigh stated:

"... I agree with what was said by Lord Justice Watkins in his judgment in the Divisional Court. He quoted the words of Lord Justice Brightman in the case of *Payne v. Lord Harris of Greenwich & Others*, 1981, 1 Weekly Law Reports 754, at page 766, where he said: 'The scope and extent of the principles of natural justice depend on the subject matter to which they are sought to be applied: see *Reg. v. Gaming Board for Great Britain, ex parte Benaim and Khaida* 1970 2 Queen's Bench Reports 417, 430. They apply to the present case, as conceded, to the extent that they impose on the Board and the Committee, and each member of it, a duty to act fairly. That duty does not, in my judgment, require that any disclosure is made to the prisoner of adverse material which the Board and the Committee have in their possession to assist them in their advisory and reporting functions.'

[Counsel for the applicant for judicial review] submitted that there is a difference in this case and that case, because that case was dealing with an initial release on parole and not with a consideration of the matter by the Board after recall. It is true factually that there is that distinction, but in my judgment that distinction results in one difference and one difference only from the point of view of the consideration of the

matter by the Board; that is that the prisoner himself, in the case of recall, is entitled to have been told the reasons for his recall. So there is some information to which he is entitled, but to my mind that is the only distinction between the two cases. The principle of natural justice upon which reliance has been placed in this case, i.e. an alleged principle of full disclosure, does not in my judgment apply."

## PROCEEDINGS BEFORE THE COMMISSION

32. Mr. Weeks' application (no. 9787/82) was lodged with the Commission on 6 April 1982. In his application, he complained that his re-detention in June 1977 was not in accordance with Article 5 para. 1 (art. 5-1) of the Convention and that, contrary to Article 5 para. 4 (art. 5-4), he was unable to challenge the lawfulness of his re-detention before a court or to have periodic reviews of his detention at reasonable intervals throughout his imprisonment.

33. The Commission declared the application admissible on 17 January 1984.

In its report adopted on 7 December 1984 (Article 31) (art. 31), the Commission expressed the opinion that there had been no breach of Article 5 para. 1 (art. 5-1) (ten votes to one) but a breach of Article 5 para. 4 (art. 5-4) (seven votes to four). The full text of the Commission's opinion and of the one partially dissenting opinion contained in the report is reproduced as an annex to the present judgment.

34. During the oral proceedings of 17 March 1986, the Delegate of the Commission informed the Court that Mr. Weeks had lodged a fresh application with the Commission (no. 12,000/86) in respect of his re-detention from 7 April 1985 onwards.

## FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

35. At the public hearing on 17 March 1986, the Government maintained in substance the concluding submissions set out in their memorial, whereby they requested the Court

"(1) to decide and declare that the re-detention of the applicant in June 1977 after his release on licence was in accordance with Article 5 para. 1 (art. 5-1) of the Convention;

(2) to decide and declare that Article 5 para. 4 (art. 5-4) does not require that the applicant, being subject as he was to a sentence of life imprisonment, should have had the right to challenge the lawfulness of his re-detention before a court of law and the right to a periodic review of the lawfulness of his continued detention at reasonable

intervals throughout his imprisonment; and that Article 5 para. 4 (art. 5-4) has not been violated".

## AS TO THE LAW

### I. SUBJECT-MATTER OF THE COURT'S INQUIRY

36. The applicant was sentenced to life imprisonment in December 1966 (see paragraph 11 above). He was released on licence a first time in March 1976 but recalled to prison in June 1977 by decision of the Home Secretary (see paragraphs 16 and 18 above). He was released on licence a second time in October 1982 but re-detained in April 1985, his licence having previously been revoked by the Home Secretary in November 1984 (see paragraphs 20 and 22 above). He remained in prison until September 1985 when he was once more released on licence. This licence was revoked in March 1986, although as at 27 January 1987 Mr. Weeks was still at liberty, having fled to France (see paragraph 23 above).

37. The applicant's complaints under Article 5 paras. 1 and 4 (art. 5-1, art. 5-4) of the Convention as examined by the Commission in its report of 7 December 1984 concerned his first recall to prison in 1977 and the periods of his imprisonment following his conviction in 1966. At the public hearing on 17 March 1986, the Delegate of the Commission informed the Court that the applicant had filed a fresh application in February 1986 in respect of his re-detention from April 1985 onwards.

The scope of the Court's jurisdiction in contentious matters is determined by the Commission's decision declaring the originating application admissible (see, *inter alia*, the *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, p. 63, para. 157). The Court is competent, in the interests of the economy of the procedure, to take into account facts occurring during the course of the proceedings in so far as they constitute a continuation of the facts underlying the complaints declared admissible by the Commission (see, *inter alia*, the *Matznetter* judgment of 10 November 1969, Series A no. 10, pp. 31-32, para. 5). However, the circumstances complained of by Mr. Weeks in his second application to the Commission are now the subject of separate proceedings and are therefore not relevant for the examination of the present case.

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

38. The applicant did not dispute that his original detention following his conviction in 1966 was justified under Article 5 para. 1 (art. 5-1) of the



Convention. He contended, however, that his detention subsequent to the revocation of his licence in June 1977 was not in accordance with this provision, which, in so far as relevant, reads:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

..."

39. In what they described as their central submission, the Government argued that the applicant's recall to prison in 1977 had not deprived him of his liberty because both his liberty and his right to liberty had been taken away from him for the rest of his life by virtue of the sentence of life imprisonment imposed on him in 1966. The applicant was on this ground alone said to be precluded from claiming a breach of Article 5 (art. 5), whether of paragraph 1 or paragraph 4 (art. 5-1, art. 5-4). The Government drew a distinction between liberty, properly understood, and a life prisoner being permitted to live on licence outside prison. In the latter case, the Government explained, the prisoner was still serving his sentence, albeit outside prison as a result of a privilege granted to him by the Home Secretary, but his right to liberty had not been restored to him. In sum, it was one and the same deprivation of liberty in June 1977 as in December 1966, based on his original conviction and sentence, and no new issue arose under Article 5 (art. 5).

40. The Court is not convinced by such reasoning.

It is true that in terms of English law, except in the event of a free pardon or an exercise of the Royal Prerogative commuting the sentence, a person sentenced to life imprisonment never regains his right to liberty, even when released on licence (see paragraph 27 above). This is not to say, however, that Mr. Weeks lost his "right to liberty and security of person", as guaranteed by Article 5 (art. 5) of the Convention, as from the moment he was sentenced to life imprisonment in December 1966. Article 5 (art. 5) applies to "everyone". All persons, whether at liberty or in detention, are entitled to the protection of Article 5 (art. 5), that is to say, not to be deprived, or to continue to be deprived, of their liberty save in accordance with the conditions specified in paragraph 1 (art. 5-1) and, when arrested or detained, to receive the benefit of the various safeguards provided by paragraphs 2 to 5 (art. 5-2, art. 5-3, art. 5-4, art. 5-5) so far as applicable.

Whether Mr. Weeks regained his "liberty", for the purposes of Article 5 (art. 5) of the Convention, when released on licence in March 1976 is a question of fact, depending upon the actual circumstances of the regime to which he was subject (see the *Ashingdane* judgment of 28 May 1985, Series A no. 93, pp. 19-20, paras. 41-42, and the authorities cited there). He was

lawfully "at large", to use the terms of section 62(9) of the 1967 Act (see paragraph 26 in fine above) when outside prison on licence. Admittedly, for persons sentenced to life imprisonment, any release under the 1967 Act is granted as an act of clemency and is always conditional (see paragraphs 20 in fine and 27 above). The freedom enjoyed by a life prisoner, such as Mr. Weeks, released on licence is thus more circumscribed in law and more precarious than the freedom enjoyed by the ordinary citizen. Nevertheless, the restrictions to which Mr. Weeks' freedom outside prison was subject under the law are not sufficient to prevent its being qualified as a state of "liberty" for the purposes of Article 5 (art. 5). Hence, when recalling Mr. Weeks to prison in 1977, the Home Secretary was ordering his removal from an actual state of liberty, albeit one enjoyed in law as a privilege and not as of right, to a state of custody.

This conclusion is not altered by the fact that on the day the Home Secretary revoked his licence (30 June 1977) Mr. Weeks was already in detention on another ground, having been remanded in custody by an order of court following his arrest on 23 June on various criminal charges (see paragraphs 17 and 18 above). The case has been argued before the Court on the understanding that as from 30 June 1977 the life sentence once more became the legal basis of Mr. Weeks' detention by reason of the Home Secretary's decision (section 62(9) of the 1967 Act - see paragraph 26 in fine above).

It must therefore be determined whether the fresh deprivation of liberty suffered by Mr. Weeks consequent upon that decision complied with Article 5 para. 1 (a) (art. 5-1-a).

41. Following his "conviction by a competent court" in December 1966, Mr. Weeks was sentenced to life imprisonment. The issue in the present case is whether his re-detention on recall to prison some ten years later was "in accordance with a procedure prescribed by law", "lawful" and undergone "after" that conviction.

42. It was not contested that Mr. Weeks' re-detention as from 30 June 1977 was in accordance with a procedure prescribed by English law and otherwise lawful under English law. That, however, is not necessarily decisive. The "lawfulness" required by the Convention presupposes not only conformity with domestic law but also, as confirmed by Article 18 (art. 18), conformity with the purposes of the deprivation of liberty permitted by sub-paragraph (a) of Article 5 para. 1 (art. 5-1-a) (see, as the most recent authority, the Bozano judgment of 18 December 1986, Series A no. 111, p. 23, para. 54). Furthermore, the word "after" in sub-paragraph (a) does not simply mean that the detention must follow the "conviction" in point of time: in addition, the "detention" must result from, "follow and depend upon" or occur "by virtue of" the "conviction" (*ibid.*, pp. 22-23, para. 53, and the Van Droogenbroeck judgment of 24 June 1982, Series A no. 50, p. 19, para. 35). In short, there must be a sufficient causal connection between

the conviction and the deprivation of liberty at issue (see the above-mentioned Van Droogenbroeck judgment, p. 21, para. 39).

43. The contested decision of the Home Secretary was taken within the legal framework set by the life sentence passed by the "competent court" in 1966, taken together with the provisions in the 1967 Act governing the release on licence and recall to prison of persons sentenced to life imprisonment. A life sentence can never be terminated, save by pardon or in the event of being commuted, and except in those circumstances any release after sentence will always be conditional (see paragraph 27 above). The 1967 Act confers on the Home Secretary the power to order both release on licence and recall, but the discretion granted is not unfettered, as it was under the system in force when the applicant was sentenced (see paragraph 25 above). The Home Secretary can only release on the recommendation of the Parole Board and, in the case of a life prisoner, only after consulting the Lord Chief Justice and the trial judge if available (section 61(1) - see paragraph 26 above). Similarly, he may revoke the licence if recommended to do so by the Parole Board (section 62(1)). He also has the power to revoke the licence without consulting the Board "where it appears to him that it is expedient in the public interest to recall the person before such consultation is practicable" (section 62(2)). However, a further constraint upon his power of recall is that his decision may be overruled by the Parole Board (section 62(5)). The revocation of the licence reactivates the original sentence of life imprisonment by making the recalled prisoner "liable to be detained in pursuance of his sentence" (section 62(9)).

44. The objectives to be pursued by the Home Secretary in exercising his discretion to release and recall are not spelt out in the 1967 Act or in its predecessor, the Prison Act 1952. Nevertheless, the statements made by the trial judge and the judges in the Court of Appeal make it quite plain what purpose the life sentence and any subsequent release into the community were meant to serve in Mr. Weeks' case.

In passing sentence, Mr. Justice Thesiger said:

"... [T]he facts of the offence and the evidence of the character and disposition of the accused ... satisfy me that ... he is a very dangerous young man. ... I think an indeterminate sentence is the right sentence for somebody of this age, of this character and disposition, who is attracted to this form of conduct. That leaves the matter with the Secretary of State who can release him if and when those who have been watching him and examining him believe that with the passage of years he has become responsible. It may not take long. Or the change may not occur for a long time - I do not know how it will work out. ... So far as the first count of the indictment is concerned, I think the right conclusion, terrible though it may seem, is that I pass the sentence that the law authorises me to pass for robbery and for assault with intent to rob with arms, that is life imprisonment. The Secretary of State can act if and when he thinks it is safe to act." (see paragraph 14 above)

This view was upheld by Lord Justice Salmon in the Court of Appeal:

"Now life imprisonment in this case at any rate means an indeterminate sentence. If when he gets to prison it then appears after he has been there some time that there are grounds for transferring him to a mental institution for treatment, there are ample powers under the Act which will enable the Home Secretary to do so. Moreover, as soon as it becomes apparent, and it is to be hoped that it may not be long, but one cannot tell, that it is safe from the public point of view and from his own point of view to do so, this boy will be released." (see paragraph 15 above)

45. In the submission of the Government, the lawfulness of any action taken by the Home Secretary in the present case derived from the immutable fact of Mr. Weeks' conviction and sentence in 1966. This in itself was sufficient to justify, under Article 5 para. 1 (a) (art. 5-1-a), his re-detention after a period of conditional release. Whilst recognising that the instability of Mr. Weeks' personality undoubtedly did influence the choice of sentence, the Government maintained that this is not material to the issue under Article 5 para. 1 (art. 5-1) since, in their view, it is not legitimate to distinguish one life sentence from another. The Convention institutions, they suggested, are not suited to determine the relative degrees of importance attributed to each factor by the sentencing court in a given case.

46. As the Delegate of the Commission pointed out, it may be extremely difficult, if not impossible, to disentangle different elements underlying a particular sentence in a given case and to determine which of those elements was accorded more importance by the sentencing judge; in the present case, however, it was the trial court itself and the Court of Appeal that explained in detail the reasons why Mr. Weeks received a life sentence as opposed to a determinate sentence. The Court agrees with the Commission and the applicant that the clearly stated purpose for which Mr. Weeks' sentence was imposed, taken together with the particular facts pertaining to the offence for which he was convicted (see paragraphs 11-15 above), places the sentence in a special category.

Mr. Weeks was convicted of armed robbery and, aged only 17, was sentenced to life imprisonment, the severest sentence known to English law (save in cases of treason and certain forms of piracy). Armed with a starting pistol loaded with blank cartridges, he had entered a pet shop and stolen 35 pence, which sum was later found on the shop floor. Later the same day, he had telephoned the police to announce that he would give himself up. It emerged from the evidence that he had committed the robbery because he owed his mother £3. What otherwise would appear a "terrible" sentence in relation to these pathetic circumstances was seen by the trial judge and the Court of Appeal as appropriate in the light of the purpose intended to be achieved.

The intention was to make the applicant, who was qualified both by the trial judge and by the Court of Appeal as a "dangerous young man", subject to a continuing security measure in the interests of public safety. The sentencing judges recognised that it was not possible for them to forecast how long his instability and personality disorders would endure. According

to the very words of Mr. Justice Thesiger and Lord Justice Salmon, they accordingly had recourse to an "indeterminate sentence": this would enable the appropriate authority, namely the Home Secretary, to monitor his progress and release him back into the community when he was no longer judged to represent a danger to society or to himself, and thus hopefully sooner than would have been possible if he had been sentenced to a long term of imprisonment. In the absence of sufficient medical evidence justifying an order sending him to a mental institution, the only means available under the British sentencing machinery to achieve this purpose was a life sentence. In substance, Mr. Weeks was being put at the disposal of the State because he needed continued supervision in custody for an unforeseeable length of time and, as a corollary, periodic reassessment in order to ascertain the most appropriate manner of dealing with him.

The grounds expressly relied on by the sentencing courts for ordering this form of deprivation of liberty against Mr. Weeks are by their very nature susceptible of change with the passage of time, whereas the measure will remain in force for the whole of his life. In this, his sentence differs from a life sentence imposed on a person because of the gravity of the offence.

47. In this sense, the measure ordered against Mr. Weeks is thus comparable to the Belgian measure at issue in the Van Droogenbroeck case, that is the placing of a recidivist or habitual offender at the disposal of the Government - although in the present case the placement was for a whole lifetime and not for a limited period (Series A no. 50, especially at pp. 21-22, para. 40). The legitimate aim (of social protection and the rehabilitation of offenders) pursued by the measure and its effect on the convicted person are substantially the same in both cases.

Having regard to Mr. Weeks' age at the time and to the particular facts of the offence he committed (see paragraphs 11 and 12 above), if it had not been for the specific reasons advanced for the sentence imposed, one could have serious doubts as to its compatibility with Article 3 (art. 3) of the Convention, which prohibits, *inter alia*, inhuman punishment. The remarks of Lord Justice Salmon in the Court of Appeal are instructive in this connection:

"At first sight a sentence of life imprisonment, particularly having regard to his age, sounds terrible, but when the factors to which reference has been made are considered it will be seen that this is really in mercy to the boy and will perhaps enable him to be released much sooner than if a long term of imprisonment had been imposed, which was the only other alternative." (see paragraph 15 above)

The sentencing judges were hoping for, though could not predict, an early release back into the community.

48. The special character of Mr. Weeks' sentence is further borne out by the statistics: between 1 January 1969 and 31 December 1984, of the

54,580 persons convicted of robbery only 17 have been sentenced to life imprisonment (see paragraph 24 above).

49. Applying the principles stated in the Van Droogenbroeck judgment, the formal legal connection between Mr. Weeks' conviction in 1966 and his recall to prison some ten years later is not on its own sufficient to justify the contested detention under Article 5 para. 1 (a) (art. 5-1-a). The causal link required by sub-paragraph (a) (see paragraph 42 above) might eventually be broken if a position were reached in which a decision not to release or to re-detain was based on grounds that were inconsistent with the objectives of the sentencing court. "In those circumstances, a detention that was lawful at the outset would be transformed into a deprivation of liberty that was arbitrary and, hence, incompatible with Article 5 (art. 5)" (Series A no. 50, pp. 21-22, para. 40).

50. In the submission of the applicant, the objectives of the courts in 1966 and 1967 as regards the length of his loss of liberty were satisfied on his release in March 1976; the requisite link was broken at that stage, so that his full rights under Article 5 (art. 5) were restored to him and his re-detention fifteen months later was no longer justified under Article 5 para. 1 (a) (art. 5-1-a).

The Court does not accept this contention. As a matter of English law, it was inherent in Mr. Weeks' life sentence that, whether he was inside or outside prison, his liberty was at the discretion of the executive for the rest of his life (subject to the controls subsequently introduced by the 1967 Act, notably the Parole Board). This the sentencing judges must be taken to have known and intended. It is not for the Court, within the context of Article 5 (art. 5), to review the appropriateness of the original sentence, a matter which moreover has not been disputed by the applicant in the present proceedings.

It remains to examine the sufficiency of the grounds on which his re-detention in June 1977 and thereafter was based. In this area, as in many others, the national authorities are to be recognised as having a certain discretion since they are better placed than the international judge to evaluate the evidence in a particular case (see, *inter alia*, the *X v. the United Kingdom* judgment of 5 November 1981, Series A no. 46, p. 20, para. 43, and the *Luberti* judgment of 23 February 1984, Series A no. 75, p. 12, para. 27).

51. The probation report prepared for Mr. Weeks' trial in 1966 characterised him as being susceptible to fluctuation of mood, as having a morbid interest in the literature of violence and a fascination for guns, and as displaying a high potential for aggression (see paragraph 13 above). His tendency towards violence and aggression continued to manifest itself periodically during his first period of imprisonment and indeed delayed his first release on licence in 1976 (see paragraph 16 above). After being formally warned of a possible revocation of his licence, he was recalled to

prison in June 1977 as a result of a series of incidents involving minor violence whilst in a drunken state, the use of an air pistol, and an attempt at suicide (see paragraph 17 above).

In view of this unstable, disturbed and aggressive behaviour, there were grounds for the Home Secretary to have considered that the applicant's continued liberty would constitute a danger to the public and to himself. The Minister's decision to re-detain remained within the bounds of the margin of appreciation available to the responsible national authorities; it cannot be regarded as arbitrary or unreasonable in terms of the objectives of the sentence imposed on Mr. Weeks, even though the Crown Court judge, at his subsequent trial in October 1977 in relation to the incidents of the previous June, suggested that he be allowed his liberty (see paragraph 19 above).

In the Court's view, therefore, a sufficient connection, for the purposes of sub-paragraph (a) of Article 5 para. 1 (art. 5-1-a), existed between his conviction in 1966 and his recall to prison in 1977.

52. On the evidence before the Court, a similar conclusion must be reached as regards the Home Secretary's decision not to direct any further conditional release until October 1982: the Parole Board took the view in December 1977 that the applicant was still a danger to himself and to the public and confirmed his recall; he then absconded from an open prison in 1979, surrendering himself in 1980; a provisional release date was deferred after he had, in October 1981 when residing at a prison hostel, injured a hostel warden with a knife during a violent struggle (see paragraph 20 above). The Home Secretary's earlier refusal in May 1979 to follow the Parole Board's recommendation to release (*ibid.*) cannot be taken as falling outside the area of discretion allowed to the national authorities under the Convention.

53. Accordingly, the applicant's recall to prison in 1977 and the period of his subsequent detention as in issue in the present proceedings (see paragraph 37 above) were not incompatible with Article 5 para. 1 (art. 5-1).

### III. ALLEGED BREACH OF ARTICLE 5 PARA. 4 (art. 5-4)

54. The applicant's second complaint was that he had not been able, either on his recall to prison in 1977 or at reasonable intervals throughout his detention, to take proceedings satisfying the requirements of paragraph 4 of Article 5 (art. 5-4), which provides:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

### **A. Whether the requisite judicial control was incorporated in the original conviction**

55. The Government shared the view of the minority of the Commission that, since Mr. Weeks was an offender sentenced to life imprisonment, the supervision of lawfulness required by Article 5 para. 4 (art. 5-4) was incorporated at the outset in the original trial and appeal. They referred in this connection to a passage from the *De Wilde, Ooms and Versyp* judgment of 18 June 1971 (Series A no. 12, p. 40, para. 76):

"At first sight, the wording of Article 5 para. 4 (art. 5-4) might make one think that it guarantees the right of the detainee always to have supervised by a court the lawfulness of a previous decision which has deprived him of his liberty ... Where [this] decision ... is one taken by an administrative body, there is no doubt that Article 5 para. 4 (art. 5-4) obliges the Contracting States to make available to the person detained a right of recourse to a court; but there is nothing to indicate that the same applies when the decision is made by a court at the close of judicial proceedings. In the latter case the supervision required by Article 5 para. 4 (art. 5-4) is incorporated in the decision; this is so, for example, where a sentence of imprisonment is pronounced after 'conviction by a competent court' (Article 5 para. 1 (a) of the Convention) (art. 5-1-a)."

56. As has been pointed out in subsequent judgments, this passage speaks only of the initial decision depriving a person of his liberty; it does not purport to deal with an ensuing period of detention in which new issues affecting the lawfulness of the detention might arise (see, for example, the above-mentioned *Van Droogenbroeck* judgment, Series A no. 50, p. 23, para. 45).

The Court must therefore determine what new issues of lawfulness, if any, were capable of arising in relation to Mr. Weeks' recall to prison and continued detention subsequent to sentence and whether the proceedings available complied with paragraph 4 of Article 5 (art. 5-4).

57. Mr. Weeks did not dispute that in so far as he may have wished to challenge the lawfulness of his recall or detention in terms of English law he at all moments had available to him a remedy before the ordinary courts in the form of an application for judicial review (see paragraphs 30 and 31 above).

However, for the purposes of Article 5 para. 4 (art. 5-4), the "lawfulness" of an "arrest or detention" has to be determined in the light not only of domestic law but also of the text of the Convention, the general principles embodied therein and the aim of the restriction permitted by Article 5 para. 1 (art. 5-1) (see the above-mentioned *Van Droogenbroeck* judgment, Series A no. 50, p. 26, para. 48, and the authorities cited there).

58. The Court has already held in the context of paragraph 1 (a) of Article 5 (art. 5-1-a) that the stated purpose of social protection and rehabilitation for which the "indeterminate" sentence was passed on Mr. Weeks, taken together with the particular circumstances of the offence for



which he was convicted, places the sentence in a special category (see paragraph 46 above): unlike the case of a person sentenced to life imprisonment because of the gravity of the offence committed, the grounds relied on by the sentencing judges for deciding that the length of the deprivation of Mr. Weeks' liberty should be subject to the discretion of the executive for the rest of his life are by their nature susceptible of change with the passage of time (see paragraphs 14 and 15 above). The Court inferred from this that if the decisions not to release or to re-detain were based on grounds inconsistent with the objectives of the sentencing court, Mr. Weeks' detention would no longer be "lawful" for the purposes of subparagraph (a) of paragraph 1 of Article 5 (art. 5-1-a) (see paragraph 49 above).

It follows that, by virtue of paragraph 4 of Article 5 (art. 5-4), Mr. Weeks was entitled to apply to a "court" having jurisdiction to decide "speedily" whether or not his deprivation of liberty had become "unlawful" in this sense; this entitlement should have been exercisable by him at the moment of any return to custody after being at liberty and also at reasonable intervals during the course of his imprisonment (see, *mutatis mutandis*, the above-mentioned Van Droogenbroeck judgment, Series A no. 50, p. 26, para. 48 in fine).

59. Article 5 para. 4 (art. 5-4) does not guarantee a right to judicial control of such scope as to empower the "court", on all aspects of the case, including questions of expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which, according to the Convention, are essential for the lawful detention of a person subject to the special kind of deprivation of liberty ordered against Mr. Weeks (*ibid.*, p. 26, para. 49).

#### **B. Whether the proceedings available subsequent to conviction satisfied the requirements of Article 5 para. 4 (art. 5-4)**

60. The Government submitted in the alternative that the requirements of Article 5 para. 4 (art. 5-4) were sufficiently met by the Parole Board's jurisdiction, supplemented as it was by the availability of judicial review before the High Court. Both the applicant and the Commission disagreed with this analysis.

##### *1. General principles*

61. The "court" referred to in Article 5 para. 4 (art. 5-4) does not necessarily have to be a court of law of the classic kind integrated within the standard judicial machinery of the country (see the above-mentioned *X v. the United Kingdom* judgment, Series A no. 46, p. 23, para. 53). The term "court" serves to denote "bodies which exhibit not only common fundamental features, of which the most important is independence of the

executive and of the parties to the case ..., but also the guarantees" - "appropriate to the kind of deprivation of liberty in question" - "of a judicial procedure", the forms of which may vary from one domain to another (see the above-mentioned De Wilde, Ooms and Versyp judgment, Series A no. 12, pp. 41-42, paras. 76 and 78). In addition, as the text of Article 5 para. 4 (art. 5-4) makes clear, the body in question must not have merely advisory functions but must have the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful. There is thus nothing to preclude a specialised body such as the Parole Board being considered as a "court" within the meaning of Article 5 para. 4 (art. 5-4), provided it fulfils the foregoing conditions (see the above-mentioned X v. the United Kingdom judgment, Series A no. 46, p. 26, para. 61).

## *2. Parole Board*

### **(a) Independence and impartiality**

62. The applicant maintained that the Parole Board is not independent of the Home Secretary, primarily because he appoints the members of the Board, provides its staff and makes the rules under which it conducts its procedures.

The Parole Board sits in small panels, each of which in the case of life prisoners includes a High Court judge and a psychiatrist (see paragraph 28 above). The manner of appointment of the Board's members does not, in the Court's opinion, establish a lack of independence on the part of the members (see, *mutatis mutandis*, the Campbell and Fell judgment of 28 June 1984, Series A no. 80, p. 40, para. 79). Furthermore, the Court is satisfied that the judge member and the other members of the Board remain wholly independent of the executive and impartial in the performance of their duties.

There remains the question whether the Board presents an appearance of independence, notably to persons whose liberty it considers (*ibid.*, pp. 39-41, paras. 78 and 81). On this point, as the Government stated, the functions of the Board do not bring it into contact with officials of the prisons or of the Home Office in such a way as to identify it with the administration of the prison or of the Home Office.

The Court therefore sees no reason to conclude that the Parole Board and its members are not independent and impartial.

### **(b) Powers and procedural guarantees**

63. The Commission, together with the applicant, took the view that the Board lacked the necessary powers and procedural guarantees for the purposes of Article 5 para. 4 (art. 5-4). The applicant further contended that the Board's proceedings were not "speedy". He pointed out that, whereas

his licence was revoked in June 1977, the Board did not give its decision until December 1977 (see paragraphs 18 and 20 above).

(i) Powers

64. According to the wording of the 1967 Act, the duty of the Parole Board is to "advise" the Home Secretary on the exercise of his powers to release prisoners on licence and to revoke such licences, and its decisions take the form of "recommendations" to the Home Secretary (sections 59(3), 61(1) and 62(1) and (5) - see paragraphs 26 and 28 above).

The Board's functions are without doubt purely advisory, both in law and in substance, as regards the periodic review that it carries out in relation to the question of the possible release on licence of a detained person serving a sentence of life imprisonment (section 61(1) of the 1967 Act - see paragraph 26 above). The Home Secretary may not, it is true, release on licence a life prisoner unless recommended to do so by the Parole Board (*ibid.*). However, where the Board does recommend release of such prisoners, the Home Secretary must also consult the Lord Chief Justice, together with the trial judge if available (*ibid.*); and, as demonstrated by the facts of Mr. Weeks' own case (see paragraph 20 above), the Home Secretary is free, in the light of all the material before him, not to accept the Board's recommendation. Quite apart from any consideration of procedural guarantees, the Board therefore lacks the power of decision required by Article 5 para. 4 (art. 5-4) when dealing with this category of case.

On the other hand, the Board's recommendation to release is binding on the Home Secretary when the Board has to consider, as it did in December 1977 in relation to Mr. Weeks, recall to prison after release on licence (section 62(5) of the 1967 Act - see paragraphs 20 and 26 above). The procedure applicable in the event of recall must therefore be examined.

(ii) Procedural guarantees

65. The language of Article 5 para. 4 (art. 5-4) speaks of the detained individual being entitled to initiate proceedings. Under the British system of parole of life prisoners, although only the Home Secretary may refer a case to the Board, referral is obligatory in recall cases except where a person recalled after a recommendation to that effect by the Board has chosen not to make written representations (section 62(4) of the 1967 Act - see paragraph 26 above). In these circumstances, the recalled person can be considered as having sufficient access to the Parole Board for the purposes of Article 5 para. 4 (art. 5-4) (see the above-mentioned *X v. the United Kingdom* judgment, Series A no. 46, p. 23, para. 52).

66. The Board deals with individual cases on consideration of the documents supplied to it by the Home Secretary and of any reports, information or interviews with the individual concerned it has itself called for (section 59(4) and (5) of the 1967 Act - see paragraph 28 above). The

prisoner is entitled to make representations with respect to his recall, not only in writing to the Board but also orally to a member of the Local Review Committee (sections 59(5)-(6) and 62(3) of the 1967 Act - see paragraphs 26 and 29 above). The individual is free to take legal advice in preparing such representations. Furthermore, he must be sufficiently informed of the reasons for his recall in order to enable him to make sensible representations (section 62(3) of the 1967 Act and the judgments in the Gunnell and Wilson cases - *ibid.*).

Whilst these safeguards are not negligible, there remains a certain procedural weakness in the case of a recalled prisoner. Thus, the Court of Appeal established in the Gunnell case that the duty on the Board to act fairly, as required under English law by the principles of natural justice, does not entail an entitlement to full disclosure of the adverse material which the Board has in its possession (see paragraphs 30 and 31 above). The procedure followed does not therefore allow proper participation of the individual adversely affected by the contested decision, this being one of the principal guarantees of a judicial procedure for the purposes of the Convention, and cannot therefore be regarded as judicial in character (see, *mutatis mutandis*, the Sanchez-Reisse judgment of 21 October 1986, Series A no. 107, p. 19, para. 51).

67. In view of this finding, the Court does not consider it necessary to rule on the remaining points raised by the applicant and the Commission, that is: firstly, whether, in relation to the special category of deprivation of liberty ordered against Mr. Weeks, this requirement of a proper procedure calls for the holding of an oral hearing in addition to the existing possibility of making written submissions (see, *mutatis mutandis*, the above-mentioned Sanchez-Reisse judgment, Series A no. 107, p. 19, para. 51); and, secondly, whether the proceedings before the Board were "speedy".

### (c) Conclusion

68. Consequently, neither in relation to consideration of Mr. Weeks' recall to prison in 1977 nor in relation to periodic examination of his detention with a view to release on licence can the Parole Board be regarded as satisfying the requirements of Article 5 para. 4 (art. 5-4).

### 3. *Judicial review*

69. The Court has in previous cases recognised the need to take a comprehensive view of the system in issue before it, as apparent shortcomings in one procedure may be remedied by safeguards available in other procedures (see, for example, the above-mentioned *X v. the United Kingdom* judgment, Series A no. 46, p. 26, para. 60). In this connection, an application for judicial review undoubtedly represents a useful supplement to the procedure before the Parole Board: it enables the individual concerned to obtain a control by the ordinary courts of both the Parole

Board's decisions (see, for example, the judgment of the Queen's Bench Division in the Wilson case - paragraph 31 above) and the Home Secretary's decisions.

The applicant, adopting conclusions reached by the Commission in its report, argued that the remedy of judicial review did not meet the requirements of accessibility and effectiveness under Article 5 para. 4 (art. 5-4) (see the above-mentioned Van Droogenbroeck judgment, Series A no. 50, p. 30, para. 54).

The grounds on which judicial review lies, as summarised by Lord Diplock in his speech in the Council of Civil Service Unions case, are "illegality", "irrationality" and "procedural impropriety". By "illegality" is meant incorrect application of the law governing the decision-making power and, in particular, breach of the relevant statutory requirements; "irrationality" covers a decision that is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it; and "procedural impropriety" is a failure to observe expressly laid down procedural rules, a denial of natural justice or a lack of procedural fairness (see paragraph 30 above).

As the Commission pointed out, the scope of the control afforded is thus not wide enough to bear on the conditions essential for the "lawfulness", in the sense of Article 5 para. 4 (art. 5-4) of the Convention, of Mr. Weeks' detention, that is to say, whether it was consistent with and therefore justified by the objectives of the indeterminate sentence imposed on him (see paragraphs 58 and 59 above). In the Court's view, having regard to the nature of the control it allows, the remedy of judicial review can neither itself provide the proceedings required by Article 5 para. 4 (art. 5-4) nor serve to remedy the inadequacy, for the purposes of that provision, of the procedure before the Parole Board.

#### *4. Recapitulation*

70. In conclusion, there has been a violation of Article 5 para. 4 (art. 5-4).

### IV. APPLICATION OF ARTICLE 50 (art. 50)

71. Article 50 (art. 50) of the Convention provides:

"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."

72. By way of just satisfaction, the applicant claimed financial compensation for various harmful consequences allegedly suffered as a result of his prolonged detention. He also sought £2,000 in respect of legal expenses referable to the proceedings before the Convention institutions, less the amounts paid by the Commission and the Court in legal aid.

Beyond making what they described as tentative, conditional and preliminary observations in their written memorial, the Government took the view that it would be premature to make any further submissions.

This being so, the question is not yet ready for decision. It is therefore necessary to reserve the matter and to fix the further procedure, taking due account of the possibility of an agreement between the respondent State and the applicant (Rule 53 paras. 1 and 4 of the Rules of Court).

### FOR THESE REASONS, THE COURT

1. Holds, by sixteen votes to one, that there has been no breach of Article 5 para. 1 (art. 5-1);
2. Holds, by thirteen votes to four, that there has been a breach of Article 5 para. 4 (art. 5-4);
3. Holds, unanimously, that the question of the application of Article 50 (art. 50) is not ready for decision;  
accordingly,
  - (a) reserves the whole of the said question;
  - (b) invites the Government to submit, within the forthcoming two months, their written comments on the said question and, in particular, to notify the Court of any agreement reached between themselves and the applicant;
  - (c) reserves the further procedure and delegates to the President of the Court power to fix the same if need be.

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 2 March 1987.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court, the following separate opinions are annexed to the present judgment:

- partly concurring and partly dissenting opinion of Mr. Thór Vilhjálmsson, Mr. Lagergren, Sir Vincent Evans and Mr. Gersing;
- partly dissenting opinion of Mr. De Meyer.

R. R.  
M.-A. E.

PARTLY CONCURRING AND PARTLY DISSENTING  
OPINION OF JUDGES THÓR VILHJÁLMSSON,  
LAGERGREN, SIR VINCENT EVANS AND GERSING

We share the view of our colleagues that the imposition of a penalty of such severity as life imprisonment in the circumstances of this case (as they appear in the material before the Court) can be comprehended only in the light of the explanation given by Mr. Justice Thesiger and Lord Justice Salmon that, although seemingly "terrible", it was passed with merciful intent. It is true that in this connection the judges emphasised that the sentence was "indeterminate", in that it did not predetermine the period for which Mr. Weeks should remain in custody but left this to the discretion of the Secretary of State. Nevertheless, there can be no doubt whatever that both the sentencing judge and the Court of Appeal were fully aware and must be understood to have intended that, in the absence of the exercise of the Royal Prerogative to pardon Mr. Weeks or to remit or reduce his sentence, he would remain subject thereto with its consequences for the restriction of his liberty for the rest of his life. As a matter of English law therefore and for all practical purposes, the life sentence imposed on Mr. Weeks is indistinguishable from any other sentence of life imprisonment imposed by the English courts. Consequently, we are unable to agree with the majority of the Court that it was in a special category distinguishing it from other life sentences (paragraph 46 of the judgment) and was comparable, for the purposes of Article 5 paras. 1 (a) and 4 (art. 5-1-a, art. 5-4) of the Convention, to the Belgian measure at issue in the Van Droogenbroeck case, that is the placing of a recidivist or habitual offender at the disposal of the Government (paragraph 47 of the judgment).

In the Van Droogenbroeck case, as the Court pointed out, the sentence imposed on the applicant under Belgian law had two components - he was sentenced to two years' imprisonment as a penalty for the offences of theft and attempted theft of which he was convicted and, as a recidivist, he was also placed by the court at the Government's disposal for an additional period of ten years pursuant to the "Social Protection" Act of 1964, a measure the execution of which could take different forms ranging from remaining at liberty under supervision to detention (see judgment of 24 June 1982, Series A no. 50, p. 9, para. 9, and p. 21, para. 39). In that case, the Court agreed with the Commission that the Belgian system for the treatment of recidivists which was at issue was "fundamentally different from that ... of the conditional release of prisoners sentenced by a court to a period of imprisonment imposed by the court as being appropriate to the case" (*ibid.*, p. 25, para. 47). In our opinion, the measures to which Mr. Weeks was subject fall squarely within the latter category. And it has to be borne in



mind that the alternative sentence considered by the British judges was a lengthy determinate sentence.

While, therefore, we agree with the conclusion of the majority of the Court that the applicant's recall to prison in 1977 and his subsequent detention were compatible with sub-paragraph (a) of Article 5 para. 1 (art. 5-1-a) (paragraph 53 of the judgment), we do so for rather different reasons and we do not agree with the conclusion of the majority that there has been a violation of Article 5 para. 4 (art. 5-4). On both aspects of the case, our views are the same as those of the minority in the Commission.

Article 5 para. 1 (a) (art. 5-1-a)

The question at issue is whether the detention of Mr. Weeks following his recall to prison in 1977 was "the lawful detention of a person after conviction by a competent court". We accept that the word "after" in sub-paragraph (a) does not simply mean that the detention must follow the conviction in point of time but "must result from, follow and depend upon or occur by virtue of the conviction" (paragraph 42 of the judgment). It is not disputed that, though severe, the life sentence imposed on Mr. Weeks was one which the British judges could properly give under English law, and in fact gave, for a crime of which he had been convicted after a proper trial. Nor is it contested that his recall to prison in 1977 and subsequent detention were in accordance with domestic law. In the terms of section 62(9) of the Criminal Justice Act 1967, he was re-detained "in pursuance of" his original life sentence. This meant that he continued to serve his sentence, the sentence imposed by the trial court. In our opinion, these elements were enough to satisfy the requirements of Article 5 para. 1 (a) (art. 5-1-a).

Article 5 para. 4 (art. 5-4)

It is well established in the Court's jurisprudence that when the decision depriving a person of his liberty is made by a court at the close of judicial proceedings the supervision required by Article 5 para. 4 (art. 5-4) is incorporated in that decision (see, *inter alia*, the *De Wilde, Ooms and Versyp* judgment of 18 June 1971, Series A no. 12, p. 40, para. 76). Inasmuch therefore as Mr. Weeks continued to serve the sentence imposed by the trial court, no further provision is required by Article 5 para. 4 (art. 5-4) to enable him to take proceedings to test the lawfulness of his detention.

We accept, of course, that what has just been said relates only to the initial decision (in this case the sentence of imprisonment) depriving a person of his liberty and that the ruling referred to in the *De Wilde, Ooms and Versyp* judgment does not go beyond this. Further issues of lawfulness could arise concerning decisions taken by the authorities in exercise of their power of release and recall in regard to the execution of the sentence. However, Mr. Weeks did not dispute the lawfulness of his recall or detention in terms of English law. If he had wished to challenge the

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decisions of the authorities relevant to his recall or re-detention on grounds of "illegality", "irrationality" or "procedural impropriety", he would have had available to him a remedy before the ordinary courts by way of an application for judicial review, which could be granted speedily.

We conclude, therefore, that there was no violation of Article 5 para. 4 (art. 5-4) in the present case.

## PARTLY DISSENTING OPINION OF JUDGE DE MEYER

I believe that there was in this case also a breach of the first paragraph of Article 5 (art. 5-1). My reasons for that conclusion are as follows.

1. The sentence imposed upon the applicant, though formally a life sentence, was in fact an indeterminate sentence.

It was explicitly so qualified, both at the Hampshire Assizes and at the Court of Appeal, by the judges who dealt with his case<sup>1</sup>.

They simply meant to enable him to be "released much sooner than if a long term of imprisonment had been imposed"<sup>2</sup>. They wanted to act "in mercy to the boy"<sup>3</sup>. It cannot be assumed that their real intention was to put him on a life-time's leash to be drawn back at any moment.

2. Life imprisonment in its ordinary sense would indeed have been a punishment too "terrible"<sup>4</sup> for a somewhat aggressive young man of seventeen, guilty of robbing - after menacing his victim with a starting pistol loaded with blank cartridges - a sum of 35 old pence, which he did not even take away<sup>5</sup>. It would have exceeded any reasonable relationship of proportionality with what actually happened. It would have been what the Eighth Amendment to the Constitution of the United States of America calls "cruel and unusual punishment", and what Article 3 (art. 3) of the European Convention on Human Rights terms "inhuman punishment".

3. The sentence was also unique.

In their answer to one of the questions put by the Court subsequent to the hearing held on 17 March 1986, the respondent Government stated that they "were not aware of any other cases where young people were given life sentences for non-homicide where the circumstances of the offence were comparable to those in the Weeks case"<sup>6</sup>; they further admitted, referring to recent case-law, that "it is obviously open to question whether, if the criteria now followed by the Court of Appeal had been strictly applied" in the applicant's case, "a life sentence would have been passed and upheld"<sup>7</sup>.

4. In executing the sentence, special care and caution were therefore required.

In the circumstances of the case, the sentence of life imprisonment, as explained by Mr. Justice Thesiger<sup>8</sup> and by Lord Justice Salmon<sup>9</sup>, entitled the

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<sup>1</sup> See paragraphs 14 and 15 of the judgment.

<sup>2</sup> See the remarks of Lord Justice Salmon, quoted in paragraph 15 of the judgment. See also those of Sir Patrick Mayhew at the hearing of 17 March.

<sup>3</sup> See again the remarks of Lord Justice Salmon as quoted *ibid*.

<sup>4</sup> See the remarks of Mr. Justice Thesiger, quoted in paragraph 14 of the judgment, and those of Lord Justice Salmon, quoted in paragraph 15 of the judgment.

<sup>5</sup> See paragraph 12 of the judgment.

<sup>6</sup> Document Cour (86) 90, p. 3.

<sup>7</sup> *Ibid.*, p. 4.

<sup>8</sup> See paragraph 14 of the judgment.

<sup>9</sup> See paragraph 15 of the judgment.

Home Secretary to keep the applicant in prison only for such a period of time as was really necessary.

5. When the applicant was first released on licence (31 March 1976), more than nine years had elapsed since he was sentenced at the Hampshire Assizes (6 December 1966).

Except for his mental breakdown in 1969 and his subsequent stay at Grendon Underwood in 1970, the pleadings, arguments and documents submitted to the Court reveal nothing either about his behaviour while detained, until his escape from Swansea Prison at the end of 1974, or about any consideration which might have been given to his situation by the authorities responsible for the execution of the sentence, before the Parole Board's recommendation that same year.

Neither has anything been submitted to justify why so much precious time was wasted.

In 1974, the applicant's detention had already lasted long enough to have lost any reasonable connection, not only with the offence he was sentenced for, but also with the necessity of protecting the public and promoting his rehabilitation.

It was still technically legal under the terms of the judicial decision on which it was founded and which it was supposed to execute. It had, however, ceased to be lawful, since it had gone far beyond the real object and purpose of that decision.

It could therefore no longer be considered as "the lawful detention of a person after conviction by a competent court".

Neither could it be further justified on any other ground.

6. The applicant has been involved in a certain number of incidents since 1974<sup>10</sup>.

These incidents cannot justify the length of his detention until 1974<sup>11</sup>.

7. Accordingly, the applicant's detention had ceased to be compatible with Article 5 para. 1 (art. 5-1) of the Convention.

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<sup>10</sup> See paragraphs 16-23 of the judgment.

<sup>11</sup> See also the remarks of Judge Streever at Maidstone Crown Court on 3 October 1977, mentioned in paragraph 19 of the judgment.