



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

COURT (CHAMBER)

CASE OF WYNNE v. THE UNITED KINGDOM

(Application no. 15484/89)

JUDGMENT

STRASBOURG

18 July 1994

In the case of Wynne v. the United Kingdom*,

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

Mr R. RYSSDAL, President,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr B. WALSH,

Mr C. RUSSO,

Mr A. SPIELMANN,

Sir John FREELAND,

Mr M.A. LOPES ROCHA,

Mr L. WILDHABER,

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

Having deliberated in private on 24 February and 22 June 1994,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 July 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 15484/89) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) on 15 June 1989 by a British citizen, Mr Edward Wynne.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 para. 4 (art. 5-4) of the Convention.

* Note by the Registrar. The case is numbered 26/1993/421/500. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. In response to the enquiry 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 and designated the lawyers who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 25 August 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr B. Walsh, Mr C. Russo, Mr A. Spielmann, Mr M.A. Lopes Rocha and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, through the Registrar, consulted the Agent of the Government of the United Kingdom ("the Government"), the applicant's lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received on 29 November 1993 the Government's memorial and, on 10 and 22 December 1993, the applicant's. On 27 January 1994 the applicant's submissions on Article 50 (art. 50) of the Convention were received. The President consented to the filing of further written submissions by the applicant on 23 February 1994 (Rule 37 para. 1, second sub-paragraph).

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 February 1994. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mr I. CHRISTIE, Foreign and Commonwealth Office,	<i>Agent,</i>
Mr D. PANNICK, QC,	<i>Counsel,</i>
Mr H. CARTER, Home Office,	
Ms J. HUTCHEON, Home Office,	
Ms H. BAYNE, Home Office,	<i>Advisers;</i>

- for the Commission

Mr F. MARTÍNEZ,	<i>Delegate;</i>
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- for the applicant

Mr E. FITZGERALD, Barrister-at-law,	
Mr B. EMMERSON, Barrister-at-law,	<i>Counsel,</i>
Mr A. DEVINE, Solicitor.	

The Court heard addresses by Mr Martinez, Mr Fitzgerald and Mr Pannick.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. In 1964 the applicant was convicted of the murder of a woman whom he had violently assaulted. He was sentenced to a mandatory term of life imprisonment. At that time the doctor who examined him found no signs of mental illness or abnormality. In May 1980 he was released on life licence after a positive recommendation by the Parole Board.

7. In June 1981 the applicant killed a 75 year-old woman who was placing flowers on a family grave in a London cemetery. He cut her throat with a knife. In December 1981 he pleaded not guilty to murder, but guilty to manslaughter on the ground of diminished responsibility. This plea was accepted by the court and in January 1982 a discretionary sentence of life imprisonment was imposed (see paragraph 12 below). The trial judge considered that a life sentence was appropriate in view of the extreme danger to the public which the applicant represented. The court, at the same time, revoked his life licence under section 62 (7) of the Criminal Justice Act 1967 ("the 1967 Act"; see paragraphs 14 and 15 below). The applicant claims that he was informed in 1983 by prison officers at H.M. Prison Wormwood Scrubs that he was subject to the regime for discretionary life sentences.

8. In December 1985 the applicant was transferred to the hospital wing of Parkhurst Prison. Since then he has been transferred to Gartree Prison where he is held as a "Category A" (high security) prisoner.

9. The applicant was considered for parole by the Parole Board in January 1989. The Board recommended that his case be referred again to the local review committee in 1994. By letter dated 14 August 1989 to the applicant's Member of Parliament, the Home Office gave the following information:

"In accordance with paragraph 4 [of section 61 of the 1967 Act], the trial judge and Lord Chief Justice were consulted in September 1987. In the light of their views, it was decided that [the applicant's] case should be referred to the local review committee, as the first stage in a formal review by the Parole Board, in June 1988.

The local review committee considered the case at that time [June 1988] and the Parole Board considered it in January 1989. The Board did not feel able to recommend [the applicant's] release and recommended instead that it should be referred to the local review committee (as the first stage in a further formal review) in January 1994. This recommendation was accepted and [the applicant] was informed accordingly. He should have been told in February, but owing to an oversight at Gartree I am afraid that he was not informed until last

month. You will appreciate that I cannot forecast what the outcome of the next review will be or say when [the applicant] might be released. When the Parole Board consider [the applicant's] case in 1994 the tariff will have been satisfied and the question of risk will be the overriding consideration. Indeed, the Parole Board will have borne the question of risk in mind in making their recommendation as to the date of the next review. As you know, the safety of the public is paramount and no life sentence prisoner will be released if the assessment of risk is unsatisfactory, no matter how long he has been detained."

10. He subsequently learned that the "tariff" period fixed by the trial judge in respect of his second offence expired in June 1991 (see paragraph 17 below as regards the "tariff" period).

11. In a Home Office memorandum dated 5 June 1992 the applicant was informed that the "tariff" in respect of his conviction in 1964 had now been served and that his continued detention was based on the risk he represented.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Life sentences

12. Murder carries a mandatory sentence of life imprisonment under the Murder (Abolition of Death Penalty) Act 1965. A person convicted of manslaughter may be sentenced to life imprisonment at the discretion of the trial judge. Such a discretionary life sentence of imprisonment may also be passed in certain other cases where the offence is grave and where there are exceptional circumstances which demonstrate that the offender is a danger to the public and that it is not possible to say when that danger will subside (see, in this connection, the *Thynne, Wilson and Gunnell v. the United Kingdom* judgment of 25 October 1990, Series A no. 190-A, pp. 19-20, paras. 50-53).

B. Release on licence and revocation of a licence

13. Under section 61 of the 1967 Act the Secretary of State may release on licence a person sentenced to life imprisonment only if recommended to do so by the Parole Board, and after consultation with the Lord Chief Justice of England and the trial judge if available. By virtue of section 62 (1) the Secretary of State may revoke the licence of a person whose recall to prison is recommended by the Parole Board.

14. Under section 62 (7) of the 1967 Act, if a person subject to a licence is convicted on indictment of an offence, the trial court may, whether or not it passes any other sentence on him, revoke the licence.

15. The effect of revocation of a licence, whether by the Secretary of State or by a court, is that the person is liable to be detained in pursuance of his sentence (section 62 (9) of the 1967 Act).

16. It is the duty of the Parole Board to advise the Secretary of State with respect to, *inter alia*, the release on licence under section 61, and the recall under section 62, of persons whose cases have been referred to the Board by the Secretary of State (section 59 of the 1967 Act; see also the above-mentioned *Thynne, Wilson and Gunnell* judgment, pp. 21-22, paras. 57-58).

C. Procedures for review of life sentences

17. Prior to 1992, in respect of both mandatory and discretionary life sentences, the Secretary of State would receive the views of the judiciary (the trial judge and the Lord Chief Justice) on the period deemed necessary to satisfy the requirements of retribution and deterrence ("the tariff period") and of the Parole Board on the question of risk. The Secretary of State would decide when, if at all, it was appropriate to release the prisoner on life licence.

He accepted the views of the judiciary, in discretionary life sentence cases, as to the length of the tariff period. However, in mandatory life sentence cases he formed his own judgment on that question, taking into account the views of the judiciary (for the distinction between discretionary and mandatory life sentences, see the above-mentioned *Thynne, Wilson and Gunnell* judgment, pp. 19-20, paras. 50-53).

18. Following the judgment of the European Court in the case of *Thynne, Wilson and Gunnell* (*loc. cit.*) changes to the procedures for the release of discretionary life prisoners were introduced by the Criminal Justice Act 1991 ("the 1991 Act"). Parliament decided, however, not to extend these changes to mandatory life sentences. Under section 34 of this Act discretionary life prisoners are now informed by the trial judge, in open court, of the tariff period appropriate for the offence. After the expiry of that period, the prisoner has a right to be released on life licence if and when the Parole Board decides that it is safe to do so. They are entitled to appear before the Board in person, to see all the reports placed before it, and to call witnesses and submit documentary evidence. When the Board decides that a prisoner should be released the Secretary of State is under a duty to do so (section 34 (3) of the 1991 Act).

Section 34 (7) (a) of the 1991 Act specifically excludes from eligibility for review under the new procedures a discretionary life prisoner who is also serving a mandatory life sentence.

19. In the debate in the House of Commons on 16 July 1991 concerning this legislation, the Minister of State for the Home Department made the

following statement concerning the differences between mandatory and discretionary life sentences:

"Mandatory life sentence cases ... raise quite different issues and the Government do not agree that it is appropriate to extend a similar procedure to these cases. In a discretionary case, the decision on release is based purely on whether the offender continues to be a risk to the public. The presumption is that once the period that is appropriate to punishment has passed, the prisoner should be released if it is safe to do so.

The nature of the mandatory sentence is different. The element of risk is not the decisive factor in handing down a life sentence. According to the judicial process, the offender has committed a crime of such gravity that he forfeits his liberty to the State for the rest of his days. If necessary, he can be detained for life without the necessity for a subsequent judicial intervention.

The presumption is, therefore, that the offender should remain in custody until and unless the Home Secretary concludes that the public interest would be better served by the prisoner's release than by his continued detention. In exercising his continued discretion in this respect, the Home Secretary must take account not just of the question of risk, but of how society as a whole would view the prisoner's release at that juncture. The Home Secretary takes account of the judicial recommendation, but the final decision is his."

20. In relation to mandatory life prisoners, the Secretary of State continues to decide the length of the tariff after considering advice from the judiciary and any representations which the prisoner wishes to make. After the expiry of that period, he has power to release the prisoner on life licence if recommended to do so by the Parole Board. The decision on whether to release is for him alone.

21. On 27 July 1993 the Secretary of State made a statement in Parliament explaining his practice in relation to mandatory life prisoners. The statement emphasised that before any mandatory life prisoner is released on life licence, the Secretary of State

"will consider not only, (a) whether the period served by the prisoner is adequate to satisfy the requirements of retribution and deterrence and, (b) whether it is safe to release the prisoner, but also (c) the public acceptability of early release. This means that I will only exercise my discretion to release if I am satisfied that to do so will not threaten the maintenance of public confidence in the system of criminal justice".

22. In determining the principles of fairness that apply to the procedures governing review of mandatory life sentences, the English courts have recognised that the mandatory sentence is, like the discretionary sentence, composed of both a punitive period (the "tariff") and a security period. As regards the latter, detention is linked to the assessment of the prisoner's risk to the public following the expiry of the "tariff" (*R. v. Parole Board, ex parte Bradley* (Divisional Court) [1991] 1 Weekly Law Reports 135; *R. v. Parole Board, ex parte Wilson* (Court of Appeal) [1992] 2 All England Reports 576; *R. v. Secretary of State for the Home Department, ex parte*

Cox (judgment of the Divisional Court of 4 September 1992); *R. v. Parole Board, ex parte Creamer and Scholey* (judgment of the Divisional Court of 21 October 1992)).

23. In *R. v. Secretary of State for the Home Department, ex parte Doody* [1993] 3 All England Reports 92, the House of Lords observed that, in contrast with the position as regards discretionary life sentences, the theory and the practice in respect of mandatory life sentences were out of tune.

In his speech, with which the other Law Lords agreed, Lord Mustill explained that the policy whereby murder was treated as an offence so grave that the proper penal element of the sentence was detention for life was inconsistent with the practice adopted by successive Secretaries of State that a mandatory life sentence included a "tariff" period to reflect the requirements of retribution and deterrence. A mandatory life prisoner knew that once he had served the penal element of his sentence the penal consequences of his crime had been exhausted.

Nevertheless, the Secretary of State was not obliged to adopt the judicial view of the "tariff" period and it was he who was entrusted with the task of deciding on the prisoner's release. He was entitled to depart from the judge's advice and to have regard to broader considerations of a public character than those which applied to an ordinary sentencing function. He added (*loc. cit.*, p. 105):

"The discretionary and mandatory life sentences, having in the past grown apart, may now be converging. Nevertheless, on the statutory framework, the underlying theory and the current practice there remains a substantial gap between them. It may be - I express no opinion - that the time is approaching when the effect of the two types of life sentence should be further assimilated. But this is a task for Parliament, and I think it quite impossible for the courts to introduce a fundamental change in the relationship between the convicted murderer and the State, through the medium of judicial review."

Lord Mustill considered that, having regard to the rights which discretionary prisoners had, the Secretary of State was required to comply with the following requirements of procedural fairness when fixing the penal element in a mandatory life sentence: the Secretary of State must inform such a prisoner of the judicial advice on the length of the "tariff", and give him the opportunity to make written representations on that subject before he decides on the appropriate term of years. If the Secretary of State departs from the judicial advice, he must give reasons for doing so.

PROCEEDINGS BEFORE THE COMMISSION

24. The applicant lodged his application (15484/89) on 15 June 1989.

He complained under Article 5 para. 4 (art. 5-4) of the Convention that he was unable to have the continued lawfulness of his detention reviewed by a tribunal.

He also complained about a number of other matters, including an alleged assault by prison staff in June 1985 and his transfer from hospital to prison subsequent to December 1985. He further claimed that he had been prevented from defending himself and had no domestic remedies available to him in respect of his various complaints. In these connections he relied on Articles 6, 8, 10 and 13 (art. 6, art. 8, art. 10, art. 13) of the Convention and Article 1 of Protocol No. 1 (P1-1).

25. On 15 October 1992 the Commission declared the applicant's complaint admissible in so far as it raised issues under Article 5 para. 4 (art. 5-4) of the Convention. The remainder of the application was declared inadmissible.

In its report of 4 May 1993 drawn up under Article 31 (art. 31), the Commission expressed the opinion that there had been no violation of Article 5 para. 4 (art. 5-4) (ten votes to five). The full text of the Commission's opinion and of the dissenting opinion contained in the report are reproduced as an annex to this judgment*.

AS TO THE LAW

26. The applicant alleged a breach of Article 5 para. 4 (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."

27. The applicant maintained that he was now detained primarily under the authority of the discretionary sentence; that in any event Article 5 para. 4 (art. 5-4) applied in the same manner to mandatory life sentences as it did to discretionary sentences; and, further, that he ought, at least, to be able to have reviewed the lawfulness of his continued detention under the discretionary sentence.

The Court has examined each of these claims in turn.

* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 294-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

A. The legal basis for the applicant's detention

28. The applicant submitted in the first place that it is the discretionary life sentence which has become the real and effective basis for his detention since his conviction in 1982. It was this sentence, imposed on him because of his dangerousness, which was intended by the trial judge to be the primary authority for this detention from then on. While he did not suggest that the mandatory sentence had disappeared, the judicial objective served by both the mandatory and the discretionary sentences had become a preventive one following his second conviction. The revocation of the mandatory life licence was thus, in reality, the logical corollary of the discretionary sentence.

In the alternative, he maintained that the judicial finding in 1982 that he was suffering from a long-standing mental disorder broke the chain of causation between the original mandatory life sentence and his subsequent re-detention under that sentence. His legal status was altered to that of someone who was not fully responsible for his actions who needed to be left in preventive detention.

He was - he claimed - thus entitled under Article 5 para. 4 (art. 5-4) to have the lawfulness of his continued detention determined by a court.

29. For both the Government and the Commission the mandatory life sentence continued to be operative following the revocation of his life licence.

30. The Court notes that the applicant received a mandatory life sentence in 1964 and was released on life licence in 1980. This, however, was revoked by the trial judge in 1982 following the applicant's conviction for manslaughter. As a result his detention thereafter was based on both the mandatory sentence, which remained in force, and the new discretionary life sentence (see paragraphs 6, 7 and 15 above). The fact that he committed a further offence in 1981 and was judged to be suffering from a mental disorder at that time in no way affected under English law the continued validity of the original sentence or its reactivation on his recall. It merely provided a supplementary legal basis for his detention.

B. Entitlement to review of the lawfulness of detention under the mandatory life sentence

31. The applicant further submitted that Article 5 para. 4 (art. 5-4) applied to mandatory life sentences in the same way as it applied to discretionary life sentences. He maintained that the distinction made by the Court in the case of *Thynne, Wilson and Gunnell v. the United Kingdom* (loc. cit., pp. 27 and 29, paras. 70, 73-74) between these two types of life sentence was no longer valid since it was based on the false assumption that a mandatory sentence had as its object the punishment of a murderer for life.

In fact the mandatory sentence had not been interpreted in this way by Parliament, the courts, the Parole Board or by successive Home Secretaries. Indeed recent court decisions have described the mandatory sentence as composed, like the discretionary life sentence, of a period of punishment (the "tariff") to reflect the requirements of retribution and deterrence as well as a period of preventive detention, following the expiry of the "tariff" period. Furthermore, the procedures that have developed to review the mandatory sentence have been founded on the understanding that when the requirements of punishment have been satisfied the only justification for continued detention is dangerousness. In particular, there is a presumption that at this point the prisoner will be released unless he is a danger to the public.

Accordingly, he submitted, it follows from the very nature of the mandatory life sentence that the applicant is entitled to invoke the same protection afforded under Article 5 para. 4 (art. 5-4) to discretionary life prisoners in the post-tariff stage, namely a review by a court of his continued dangerousness.

32. The Government, with whom the Commission agreed, contended that a mandatory life sentence was imposed as punishment for the gravity of the offence of murder, as perceived by Parliament. By contrast, a discretionary life sentence was imposed because of the judicial assessment of the offender as mentally unstable or dangerous, conditions which may change over time. They rejected the applicant's thesis that the mandatory sentence was handed down in part for reasons of security and risk, pointing out that a trial judge was obliged under English law to sentence a murderer to life imprisonment even if he was satisfied that the murderer posed no danger as, for example, in the case of "mercy killing". Parliament had considered that such a grave crime deserved to be punished by life imprisonment and had removed all discretion as to sentencing from the trial court. The sentencing of a murderer could thus not be characterised as a decision of the court to confine a dangerous offender unless and until he was safe to be released. Moreover, it was a matter for the Secretary of State to decide if and when a murderer should be released on licence having regard to the public interest, in the light of stated criteria which govern the exercise of this discretion (see paragraphs 19 and 21 above).

In sum, the requirements of Article 5 para. 4 (art. 5-4) were satisfied by the original trial procedure.

33. The Court recalls its judgment in *Thynne, Wilson and Gunnell* (loc. cit.) where it held that discretionary life prisoners were entitled under Article 5 para. 4 (art. 5-4) to take proceedings to have the lawfulness of their continued detention decided by a court at reasonable intervals and to have the lawfulness of any re-detention determined by a court. This view was taken because of the very nature of the discretionary life sentence which, unlike the mandatory sentence, was imposed not because of the inherent

gravity of the offence but because of the presence of factors which were susceptible to change with the passage of time, namely mental instability and dangerousness. A clear distinction was drawn between the discretionary life sentence which was considered to have a protective purpose and a mandatory life sentence which was viewed as essentially punitive in nature (*ibid.*, pp. 27 and 29, paras. 70, 73-74).

34. The applicant is now asking the Court to reconsider its characterisation of the mandatory sentence in *Thynne, Wilson and Gunnell* on the grounds *inter alia* that recent English judicial pronouncements have tended to assimilate both types of life sentence.

35. The Court notes judicial comments to the effect that the theory and practice of the mandatory sentence are out of tune and that, for purposes of procedures designed to consider the release of the mandatory prisoner as well as the standards of fairness applicable to such procedures, the mandatory sentence should also be seen as containing both a punitive and a preventive element (see paragraphs 22-23 above).

However, the fact remains that the mandatory sentence belongs to a different category from the discretionary sentence in the sense that it is imposed automatically as the punishment for the offence of murder irrespective of considerations pertaining to the dangerousness of the offender (see paragraph 12 above). That mandatory life prisoners do not actually spend the rest of their lives in prison and that a notional tariff period is also established in such cases - facts of which the Court was fully aware in *Thynne, Wilson and Gunnell* (*loc. cit.*, p. 29, para. 74), - does not alter this essential distinction between the two types of life sentence.

As observed by the House of Lords in *R. v. Secretary of State, ex parte Doody*, while the two types of life sentence may now be converging there remains nonetheless, on the statutory framework, the underlying theory and the current practice, a substantial gap between them (see paragraph 23 above). This is borne out by the very facts *inter alia* relied on by the applicant to support his case, namely that in mandatory life sentences the release of the prisoner is entirely a matter within the discretion of the Secretary of State who is not bound by the judicial recommendation as to the length of the tariff period and who is free under English law to have regard to other criteria than dangerousness, following the expiry of the "tariff" period, in deciding whether the prisoner should be released (see paragraphs 19, 21 and 23 above). It is further reflected in the decision of Parliament to limit the application of the new procedures in the 1991 Act to discretionary life sentences only, even in cases like the present where the prisoner is serving both a mandatory and a discretionary life sentence (see paragraph 18 above).

36. Against the above background, the Court sees no cogent reasons to depart from the finding in the *Thynne, Wilson and Gunnell* case that, as regards mandatory life sentences, the guarantee of Article 5 para. 4 (art. 5-4)

was satisfied by the original trial and appeal proceedings and confers no additional right to challenge the lawfulness of continuing detention or re-detention following revocation of the life licence (see, *mutatis mutandis*, the *Cossey v. the United Kingdom* judgment of 27 September 1990, Series A no. 184, p. 14, para. 35). Accordingly, in the circumstances of the present case, there are no new issues of lawfulness which entitle the applicant to a review of his continued detention under the original mandatory life sentence.

C. Entitlement to review of the lawfulness of detention under the discretionary life sentence

37. The applicant has, however, also contended that at the very least Article 5 para. 4 (art. 5-4) confers on him the right to challenge the lawfulness of his detention on the basis of the discretionary life sentence.

38. The Court does not accept this claim. A review of the lawfulness of the applicant's detention following his conviction for manslaughter (see paragraph 7 above) would be devoid of purpose since he is also serving a mandatory life sentence for murder at the same time and enjoys no possibility of release until the Secretary of State considers that it is in the public interest to do so (see, *mutatis mutandis*, the *Fox, Campbell and Hartley v. the United Kingdom* judgment of 30 August 1990, Series A no. 182, p. 31, para. 73, and paragraphs 19, 21 and 23 above).

D. Conclusion

39. In conclusion, there has been no violation of Article 5 para. 4 (art. 5-4).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 5 para. 4 (art. 5-4).

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar