AS TO THE ADMISSIBILITY OF

Application No. 24888/94
by V.
against the United Kingdom

The European Commission of Human Rights sitting in private on 6 March 1998, the following members being present:

MM S. TRECHSEL, President
M.P. PELLONPÄÄ
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
Mrs G.H. THUNE
Mrs J. LIDDY
MM L. LOUCAIDES
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
D. SVÁBY
A. PERENIC
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ
Mrs M. HION
Mr A. ARABADJIEV

Mr M. de SALVIA, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 May 1994 by V. against the United Kingdom and registered on 11 August 1994 under file No. 24888/94;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the Commission's decision of 28 November 1994 to communicate the application;

- the observations submitted by the respondent Government on 29 March 1995 and the observations in reply submitted by the applicant on 2 August 1995;

- the observations submitted by the Government on 16 February 1998 and the observations submitted by the applicant on 27 February 1998;

- the oral observations made by the parties at the hearing held in Strasbourg on 6 March 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1982 and currently serving a sentence of detention during Her Majesty's pleasure at a secure unit run by a local authority. He is represented before the Commission by John Howell & Co., solicitors practising in Sheffield. The facts as submitted by the parties may be summarised as follows.

a. Particular circumstances of the case

The applicant's childhood was somewhat troubled as a result of his parents' separation and the mild retardation suffered by his two other siblings. There was a history of some health problems and of "a moderate attention deficit disorder". Dr. Bentovim, who examined him at the time of trial and subsequently, noted that "he showed evidence of immaturity, behaving in many ways like a younger child emotionally".

On 24 November 1993, the applicant, aged 11, was convicted of murder and sentenced to detention during Her Majesty's pleasure.

The conviction related to an offence of murder committed by the applicant when he was ten years old in the company of another ten year old boy R.T.. The offence involved the killing of a two year old boy whom the two offenders had abducted from a shopping precinct and who was then battered to death and left on a railway line to be run over.

The trial of the applicant and R.T. took place in public in an adult Crown Court, preceded by massive national publicity. The names of the two boys were ordered not to be disclosed during the proceedings but the judge ordered that the names be made public at the end of the trial. Pictures of the boys were shown on television and in the press.

On 1 November 1993, at the beginning of the trial, the applicant's lawyer objected that the trial was unfair due to the nature and extent of the media coverage. After hearing argument, the trial judge found that it was not established that the defendants would suffer serious prejudice to the extent that no fair trial could be held. He referred to the warning that had been given to the jury to put out of their minds anything which they might have heard or seen about the case outside the courtroom.

After conviction, the trial judge recommended that a period of eight years be served by the boys to satisfy the requirements of retribution and deterrence (the "tariff"). The Lord Chief Justice recommended a period of ten years. The applicant's representatives made written representations to the Secretary of State, who was to fix the tariff period.

The applicant made no appeal to the Court of Appeal against his conviction.

By letter dated 16 June 1994, the Secretary of State informed the applicant that the family of the deceased child had submitted a petition signed by 278,300 people urging him to take account of their belief that the boys should never be released, accompanied by 4,400 letters of support from the public; that a Member of Parliament had submitted a petition signed by 5,900 people calling for a minimum of 25 years to be served; that 21,281 coupons from the Sun newspaper supporting a whole life tariff and a further 1,357 letters and small petitions had been received of which 1,113 wanted a higher tariff than the judicial recommendations. His solicitors were given an opportunity to submit further representations to the Secretary of State.

By letter dated 22 July 1994, the Secretary of State informed the applicant that he should serve a period of fifteen years in respect of retribution and deterrence. The letter stated inter alia:

"In making his decision, the Secretary of State had regard to the

circumstances of the offence, the recommendations received from the judiciary, the representations made on your behalf and the extent to which this case could be compared with other cases. He also has regard to the public concern about this case, which was evidenced by the petitions and other correspondence the substance of which were disclosed to your solicitors by our letter of 16 June 1994, and to the need to maintain public confidence in the system of criminal justice.

The Secretary of State takes fully into account the fact that you were only 10 years old when the offence was committed. He further acknowledges that a much lesser tariff should apply than in the case of an adult.

The Secretary of State notes the representations which were made on your behalf regarding the relative culpability of yourself and your co-defendant. The Secretary of State notes that the trial judge was unable to determine this. The Secretary of State has reached the same conclusion.

The recommendations made by the trial judge and the Lord Chief Justice were that the appropriate tariff should be 8 years, and 10 years respectively. The trial judge added that if the defendants had been adults then the appropriate tariff would have been 18 years. The Secretary of State has had regard to these views. He takes the view that this was an exceptionally cruel and sadistic offence against a very young and defenceless victim committed over a period of several hours. The Secretary of State believes that if the offence had been committed by an adult then the appropriate tariff would have been in the region of 25 years and not 18 years as suggested by the trial judge.

For these reasons, and bearing in mind your age when the offence was committed, the Secretary of State has decided to fix a tariff of 15 years in your case. The Secretary of State is satisfied that such a tariff is consistent with the tariffs fixed in other cases.

The Secretary of State is prepared to consider any fresh representations which you or your representatives might wish to make about the length of the tariff and, in the light of such fresh representations, to reduce the tariff if appropriate."

The applicant instituted judicial review proceedings challenging, inter alia, the tariff which has been set by the Secretary of State as being disproportionately long and fixed without due regard to the needs of rehabilitation. Leave was granted on 7 November 1994.

On 2 May 1996, the Divisional Court upheld part of the applicants' claims. On 30 July 1996, the Court of Appeal dismissed the appeal of the Secretary of State. On 12 June 1997, the House of Lords by a majority dismissed the Secretary of State's appeal and allowed the applicants' cross-appeal. A majority of the House of Lords found that it was unlawful for the Secretary of State to adopt a policy, in the context of applying the tariff system, which, even in exceptional circumstances, treated as irrelevant the progress and development of a child who was detained during Her Majesty's pleasure. A majority of the House of Lords also held that in fixing a tariff the Secretary of State was exercising a power equivalent to a judge's sentencing power and, like a sentencing judge, he was required to remain detached from the pressure of public opinion. Since the Secretary of State had misdirected himself in giving weight to the public protests about the level of the applicant's tariff and had acted in a procedurally unfair way, his reasons had been rendered unlawful. The tariff set by the Secretary of State was accordingly quashed.

On 10 November 1997, the Secretary of State informed Parliament

that, in light of the House of Lords' judgment, he had adopted a new policy in relation to young offenders convicted of murder and sentenced to detention during Her Majesty's pleasure pursuant to which, inter alia, the tariff initially set would be kept under review by the Secretary of State in light of the progress and development of the offender. The Secretary of State has invited the applicant's representatives to make representations to him with regard to the fixing of a fresh tariff.

b. Relevant domestic law and practice

1. Age of criminal responsibility

Pursuant to section 50 of the Children and Young Persons Act 1933 (as amended in 1963), the age of criminal responsibility in England and Wales is ten years, below which no child can be found guilty of an offence. A child between the age of ten and fourteen is subject to a presumption that he or she is doli incapax: this presumption may be rebutted by the prosecution proving beyond a reasonable doubt that the child knew that the act was wrong as distinct from merely naughty or childish mischief (In Re C. (a minor) (A.P.) 16 March 1995 House of Lords).

2. Mode of trial

Pursuant to section 24 of the Magistrates' Courts Act 1980, children and young persons under 18 years must be tried summarily in the magistrates' court unless charged with homicide, manslaughter or other offence punishable if committed by an adult with fourteen or more years' imprisonment.

3. Detention during Her Majesty's pleasure

Background

The notion of detention during Her Majesty's pleasure had its origins in an Act of 1800 for "the safe custody of insane persons charged with offences". Section 1 provided that defendants acquitted of a charge of murder, treason or felony on the grounds of insanity at the time of the offence were to be detained in "strict custody until His Majesty's pleasure shall be known" and described their custody as being "during His <Majesty's> pleasure".

In 1908, detention during His Majesty's pleasure was introduced in respect of offenders aged ten to sixteen and then extended to cover those under eighteen in 1933. The provision in force at present is Section 53 (1) of the Children and Young Persons Act 1933 (as amended) which provides:

> "A person convicted of an offence who appears to the Court to have been under the age of eighteen years at the time the offence was committed shall not, if he is convicted of murder, be sentenced to imprisonment for life nor shall sentence of death be pronounced on or recorded against any such person but in lieu thereof the court shall ... sentence him to be detained during Her Majesty's pleasure and, if so sentenced he shall be liable to be detained in such a place and under such conditions as the Secretary of State may direct."

At the age of 18, the child sentenced to detention during Her Majesty's pleasure becomes liable to be transferred to a Young Offender's Institution and thereafter, at the age of 21, to detention on the same basis and in the same institution as an adult sentenced to life imprisonment for murder.

Categorisation of detention "during Her Majesty's pleasure"

Mandatory life sentences are imposed in respect of the offence of murder committed by adults (Murder (Abolition of Death Penalty) Act 1967). Persons convicted of certain violent or sexual offences, eg. manslaughter, rape, or robbery, may be sentenced to life imprisonment at the discretion of the trial judge. The principles underlying the passing of a discretionary life sentence are:

i. that the offence is grave and

ii. that 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.

The sentence of "custody for life" is imposed where the offence of murder is committed by an individual between the ages of 18 and 21 (section 8 (1) of the Criminal Justice Act 1982).

In the case of ex parte Prem Singh on 20 April 1993, Evans LJ in the Divisional Court held as follows in respect of detention "during Her Majesty's pleasure":

"At the time of sentencing, the detention orders under section 53 were mandatory. It is indeed the statutory equivalent for young persons of the mandatory life sentence for murder. But the sentence itself is closer in substance to the discretionary sentence of which part is punitive (retribution and deterrence) and the balance justified only by the interests of public safety when the test of dangerousness is satisfied. The fact that the mandatory life prisoner may be given similar rights as regards release on licence does not alter the fact that the mandatory life sentence is justifiable as punishment for the whole of its period: see R. v. Secretary of State, ex.p. Doody & others [1993] Q.B. 157 and Wynne v. UK (E.C.H.R. 1st December 1992). The order for detention under section 53 is by its terms both discretionary and indeterminate: it provides for detention 'during Her Majesty's pleasure'. (Section 53(4) which expressly authorised the Secretary of State to discharge the detainee on licence 'at any time' was repealed by the Parole Board provisions of the Criminal Justice Act 1967, but this does not, in my judgment, alter the nature of the sentence in any material respect.) I would decide the present case on the narrow ground that, notwithstanding Home Office and Parole Board practice, the applicant should be regarded as equivalent to a discretionary life prisoner for the purpose of deciding whether Wilson rather than Payne governs his case."

The Court accordingly held that the applicant in the case, detained during Her Majesty's pleasure, should be afforded the same opportunity, as would be given a discretionary life prisoner, to see the material before the Parole Board when it decided upon whether he should be released after his recall to prison on revocation of his licence.

Release on licence and revocation of licences

Persons sentenced to mandatory and discretionary life imprisonment, custody for life and those detained during Her Majesty's pleasure have a "tariff" set in relation to that period of imprisonment they should serve to satisfy the requirements of retribution and deterrence. After the expiry of the tariff, the prisoner becomes eligible for release on licence. Applicable provisions and practice in respect of the fixing of the tariff and release on licence have been subject to change in recent years, in particular, following the coming into force on 1 October 1992 of the Criminal Justice Act 1991 (the 1991 Act).

On 1 October 1992, Part II of the Criminal Justice Act 1991 (the 1991 Act) came into force.

The 1991 Act instituted changes to the regime applying to the release of discretionary life prisoners following the decision of the Court in the Thynne, Wilson and Gunnell case (Eur. Court H.R., judgment of 25 October 1990, Series A no. 190).

Pursuant to section 34 of the 1991 Act, the tariff of a discretionary life prisoner is fixed in open court by the trial judge after conviction. After the tariff has expired, the prisoner may require the Secretary of State to refer his case to the Parole Board which has the power to order his release if it is satisfied that it is no longer necessary for the protection of the public that he be detained. Pursuant to the Parole Board Rules 1992 which came into force on 1 October 1992, a prisoner is entitled to an oral hearing, to disclosure of all evidence before the panel and to be legally represented. There is provision enabling a prisoner to apply to call witnesses on his behalf and to cross-examine those who have written reports about him.

For the purposes of the 1991 Act, persons detained during Her Majesty's pleasure or serving mandatory sentences of life imprisonment or custody for life are not regarded as discretionary life prisoners. In relation to these prisoners, the Secretary of State continues to decide the length of the tariff. The view of the trial judge is made known to the prisoner after his trial as is the opinion of the Lord Chief Justice. The prisoner is afforded the opportunity to make representations to the Secretary of State who then proceeds to fix the tariff and is entitled to depart from the judicial view (R. v. Secretary of State for the Home Department, ex parte Doody [1993] 3 AER 92).

As regards release on licence, these categories of prisoners are subject to section 35 of the 1991 Act, which provides as relevant:

> "(2) If recommended to do so by the Board, the Secretary of State may, after consultation with the Lord Chief Justice together with the trial judge if available, release on licence a life prisoner who is not a discretionary life prisoner."
>
> Section 39 provides as relevant:
>
> "(1) If recommended to do so by the Board in the case of a long term or life prisoner who has been released on licence under this Part, the Secretary of State may revoke his licence and recall him to prison...
>
> (3) A person recalled to prison under subsection (1) or (2) above
>
> (a) may make representations in writing with respect to his recall; and
>
> (b) on his return to prison, shall be informed of the reasons for his recall and of his right to make representations.
>
> (4) The Secretary of State shall refer to the Board -
>
> (a) the case of a person recalled under subsection (1) above who makes representations under sub-section (3) above...
>
> (5) Where on a reference under subsection (4) above the Board -
>
> (a) directs in the case of a discretionary life prisoner;

or

(b) recommends in the case of any other person,

his immediate release on licence under this section, the Secretary of State shall give effect to the direction or recommendation."

On 27 July 1993, the Secretary of State made a statement of policy in relation to mandatory life prisoners, stating, inter alia, that before any such prisoner is released on licence he

"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 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".

Recent developments

On 1 October 1997, section 28 of the Crime (Sentences) Act 1997 was brought into force in order to implement the judgment of the Court in the Hussain and Singh cases (Eur. Court HR, Hussain v. United Kingdom judgment of 21 February 1996, Reports 1996-I, p. 252 and Singh v. United Kingdom judgment of 21 February 1996, Reports 1996-I, p. 280). The section provides that, after the tariff period has expired, it shall be for the Parole Board (and not, as previously, for the Secretary of State) to decide whether it is safe to release on life licence an offender serving a sentence of detention during Her Majesty's pleasure for an offence of murder committed before that offender reaches the age of 18.

On 10 November 1997, the Secretary of State announced that in light of the House of Lords decision of 12 June 1997 he would adopt the following policy:

"I shall continue to seek the advice of the trial judge and the of the Lord Chief Justice in deciding what punishment is required in any case of a person convicted under section 53(1) of the Children and Young Persons Act 1933. I shall then set an initial tariff with that advice, and the offender's personal circumstances, in mind; I shall continue to invite representations on the prisoner's behalf and give reasons for decisions.

Officials in my Department will receive annual reports on the progress and development of young people sentenced under section 53(1) whose initial tariff has yet to expire. Where there appears to be a case for considering a reduction in tariff, that will be brought to the attention of Ministers.

When half of the initial tariff period has expired, I, or a Minister acting on my behalf, will consider a report on the prisoner's progress and development, and invite representations on the question of tariff, with a view to determining whether the tariff period originally set is still appropriate...."

COMPLAINTS

Concerning the trial

The applicant submits that his trial at the age of eleven for an

offence committed at the age of ten violates Articles 3, 6 and 14 of the Convention.

The applicant submits that to treat a child of his age as criminally liable and to put him on public trial in an adult court constitutes inhuman and degrading treatment.

The applicant submits that his trial on a charge of murder violates Article 6 of the Convention since it is impossible to be satisfied that a ten year old sufficiently understands the proceedings to be able to instruct counsel competently and make informed choices as to his defence. He was not in fact able to understand and follow the trial proceedings and to appreciate the defences open to him to ensure that his trial was a fair one.

The applicant complains of discrimination, alleging that there is no rational basis for treating a ten year old as accountable, whereas a 9 year old is exempted from all criminal liability.

Concerning the penalty imposed

The applicant submits that the penalty imposed of detention during Her Majesty's pleasure was so severe in its consequences for a child of eleven, who was ten at the time of the offence, as to constitute an inhuman punishment and/or inhuman treatment. It is also enforced in a manner that is punitive and this expressly punitive element when applied to a child violates Articles 3 and 5 of the Convention in that it is not authorised by law. By reason of its mandatory nature, the judge having no discretion to impose a sentence appropriate to a child offender's background and circumstances, the sentence was arbitrary and, again, contrary to Article 5.

Concerning detention

The applicant complains of the procedure by which his "tariff" is fixed by a member of the executive rather than by a fair and impartial tribunal independent of the executive. As a sentence within a sentence, the applicant submits that the imposition of the "tariff" should attract the safeguards of Article 6 of the Convention.

The applicant further submits that the length of detention after the "tariff" should be subject to review by a court satisfying the requirements of Article 5 para. 4 of the Convention.

The applicant complains that the lack of any mechanism to review and, if appropriate, to terminate the sentence altogether, either at the attainment of majority or thereafter, violates Articles 3 and 5 of the Convention. Liability to what is effectively punitive detention in an adult institution after the age of 18, for an offence committed when aged ten, also violates Article 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 May 1994 and registered on 28 July 1994.

On 28 November 1994, the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 29 March 1995 after one extension of the time-limit fixed for that purpose. The applicant replied on 2 August 1995, after two extensions of the time-limit.

On 27 October 1995, the Commission decided to grant the applicant legal aid.

On 19 January 1996, the Commission decided to invite the parties to make submissions on the admissibility and merits of the application at an oral hearing, to be held jointly with Application No. 24888/94 V. v. United Kingdom. The date of the hearing was to be fixed having regard to the delivery of judgment in the cases of Abed Hussain v. United Kingdom and Prem Singh v. United Kingdom. Judgment was given in these two cases on 21 February 1996 (Eur. Court H.R., Abed Hussain v. United Kingdom judgment, Reports 1996-I, p. 252 and Prem Singh v. United Kingdom, Reports 1996-I, p. 280).

On 19 April 1996, the Commission granted the applicant legal aid.

Following consultation with the parties, the oral hearing was fixed for 5 September 1996.

By letter dated 16 July 1996, the parties informed the Commission that judgment by the Court of Appeal in the applicants' judicial review application was expected imminently and that in view of the likelihood of appeal being granted to the House of Lords, they requested that the hearing be adjourned.

Following the judgment of the House of Lords on 12 June 1997, the applicant was consulted regarding his intention to continue with his application. The applicant replied on 19 August 1997. Having consulted the parties, the hearing was fixed for 6 March 1988.

On 16 February 1998, the Government submitted a written brief for the hearing. On 27 February 1998, the applicant submitted a written brief for the hearing.

On 6 March 1998, at the hearing held in Strasbourg, the parties were represented as follows. The Government were represented by their Agent, Mr I. Christie, Mr D. Pannick QC, and Mr M. Shaw as counsel and Ms C. Price and Mr T. Morris, as advisers from the Home Office. The applicant was represented by Mr E. Fitzgerald QC and B. Emmerson as counsel, Mr T. Loflin, attorney at law and Mr J. Dickinson, solicitor.

THE LAW

The applicant complains of the process by which, and conditions under which, he was tried for murder; the nature of the sentence imposed and the length of the tariff period imposed in respect of retribution and deterrence; the tariff-fixing procedure; the arbitrariness of his detention; and an alleged lack of any effective review by a judicial body of the lawfulness of his detention. He invokes the following provisions of the Convention.

Article 3 (Art. 3) of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 (Art. 5) of the Convention

"1. 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;

...

4. 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. "

Article 6 (Art. 6) of the Convention

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

Article 8 (Art. 8) of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 (Art. 14) of the Convention

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Exhaustion of domestic remedies

Insofar as the applicant complains that his trial was unfair since he could not properly understand, or participate in, the proceedings, the Government submit that the applicant has failed to exhaust domestic remedies as required by Article 26 (Art. 26) of the Convention since he failed to complain of this during or after the proceedings, by way of appeal. Similarly, no complaint was made during the proceedings as to any alleged unfairness caused by the public nature of the proceedings.

The applicant submits that an application to the trial judge, or an appeal, on the basis that he was unfit to plead would have stood no prospect of success since the legal test of incapacity required is set very high. He points out that evidence was called before the court as to his mental age and capacity and that the trial judge was himself under a duty to raise the issue. He also argues that in any event a successful plea of unfitness would have only had the effect of postponing the trial, and his eventual rehabilitative treatment, until he was considered fit to plead. He further disputes that there was any realistic prospect of applying to the judge in respect of the public nature of the proceedings.

The Commission recalls that Article 26 (Art. 26) of the Convention only requires the exhaustion of such remedies as relate to the breaches of the Convention alleged and at the same time can provide effective and sufficient redress. An applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach (cf. No. 9248/81, Dec. 10.10.83, D.R. 34 p. 78).

It is furthermore established that the burden of proving the existence of available and sufficient domestic remedies lies upon the State invoking the rule (cf. Eur. Court. H.R., Deweer judgment of 27 February 1980, Series A no. 35, p. 15, para. 26, and No. 9013/80, Dec. 11.12.82, D.R. 30 p. 96, at p. 102).

The Commission recalls that domestic law sets the age of criminal responsibility at ten and further provides that a child above that age who is charged with murder shall be tried in an adult criminal court, the proceedings in which court are in principle open to the public. It is not satisfied that any application to the trial judge or on appeal would have stood any effective prospect of success insofar as it relied on the applicant's age and the consequences of that on his capacity to understand or effectively participate in the proceedings. It observes that the Government have not disputed the applicant's assertion that a finding of unfitness to plead, namely, that the applicant was not fit to stand trial, would have had the effect only of postponing the proceedings to a later date. It considers that an indeterminate adjournment of this kind could only be regarded as seriously detrimental to the applicant's interests in obtaining appropriate treatment. It would also note that Article 6 (Art. 6) of the Convention requires criminal proceedings to be determined within a reasonable time. Consequently, it does not consider that the possibility of invoking an alleged unfitness to plead on the part of the applicant can be regarded as a practically available remedy within the meaning of Article 26 (Art. 26) of the Convention.

The Commission therefore finds that this aspect of the application cannot therefore be rejected for failure to exhaust domestic remedies.

As regards the substance of the application

The Government submit, inter alia, that the criminal proceedings by which the applicant was found guilty of murder did not constitute inhuman or degrading treatment or punishment contrary to Article 3 (Art. 3) of the Convention. They point out that the social services and the trial judge took steps to protect the applicant's welfare and interests during the proceedings and that it was necessary to prove beyond reasonable doubt his responsibility for the grave crime in issue. Since the public had a legitimate interest in being informed about the serious matters in issue, the authorities were entitled to hold the trial in public. The Government also dispute that the applicant suffered any significant degree of distress, anguish or fear beyond that which would inevitably have ensued from an enquiry into the appalling murder and his own reflection as to his conduct and the possible consequences.

The Government submit that the proceedings complied fully with the fairness requirements imposed by Article 6 (Art. 6) of the Convention, pointing out that the applicant was represented by highly experienced leading counsel and that no complaint was made during or after the proceedings as to his inability properly to understand what was happening. During the trial, the issue of the applicant's responsibility for his actions was subject to the taking of evidence and accepted as proved beyond reasonable doubt by the jury, who were also satisfied that the applicant knew that his acts were seriously wrong. They submit that the trial procedure was not discriminatory contrary to Article 14 (Art. 14), noting that the applicant's status as a child was taken into account in modifying the proceedings and that his position could not be compared with that of children under ten or adults with diminished responsibility.

The Government dispute that the sentence of detention during Her Majesty's pleasure per se discloses treatment of such severity as to constitute inhuman or degrading treatment or punishment. The applicant

is currently receiving education, training, health care and recreational facilities appropriate to his age and cannot complain that he will continue to be detained unless and until it is safe to release him into the community. Nor can it be inappropriate for the applicant, when he grows older, to be treated in the same way as other offenders of the same age. The Government also submit, in the context of Article 5 para. 1 (Art. 5-1), that there is nothing arbitrary about the sentence of detention which has been imposed. In their view, Article 6 para. 1 (Art. 6-1) does not apply to the tariff fixing procedure and its requirements are fully satisfied by the imposition of the sentence by a judge following conviction by a jury. Finally, they submit that review of the lawfulness of the applicant's detention required by Article 5 para. 4 (Art. 5-4) was satisfied by the trial procedure and any subsequent issues of lawfulness may be subject to applications for judicial review, and once the tariff has expired, to review by the Parole Board.

The applicant submits, inter alia, that the process of putting him on trial in a public criminal court for adults constituted inhuman and degrading treatment or punishment contrary to Article 3 (Art. 3) of the Convention. He refers to his young age, the frightening nature of the ordeal and evidence that the intimidating and humiliating nature of the proceedings had a destructive and devastating effect. He also submits that as a child aged 10 at the time of the offence he should not have been held criminally liable. In the alternative, if the treatment does not reach the level of severity necessary for the purposes of Article 3 (Art. 3), he submits that it nonetheless discloses a violation of his right to respect for private life under Article 8 (Art. 8) of the Convention, in particular, the public nature of the proceedings and the unnecessary disclosure of his identity.

The applicant invokes Article 6 (Art. 6) of the Convention, arguing that he did not have a fair trial since he was unable to understand and participate effectively in the proceedings due to his young age, the nature of the proceedings and the traumatising effect of those proceedings. He submits that fairness requires that trial procedures for young children be modified to take their best interests as a primary consideration. He complains additionally that the proceedings disclose discrimination contrary to Article 14 (Art. 14) in that children of nine could not have been held criminally liable and that adults with arrested development giving them a mental age of ten would have been afforded the defence of diminished responsibility to a charge of murder.

The applicant further complains that the sentence of detention during Her Majesty's pleasure applied to children, which is mandatory, indeterminate, contains a substantial punitive element and is not terminable at any stage, constitutes inhuman and degrading treatment contrary to Article 3 (Art. 3). He also refers to the consequence that as he grows older he will be transferred to young offenders' institutions and adult prisons where he will be treated in the same way as persons who committed their offences at an older age. He submits that this sentence also constitutes an arbitrary deprivation of liberty contrary to Article 5 para. 1 (Art. 5-1) and that the fixing of the tariff by the Secretary of State violates Article 6 para. 1 (Art. 6-1) in that his sentence is effectively determined by a political rather than judicial body. The lack of any immediate or subsequent periodic review by a judicial body of his continued detention is also claimed to violate the requirements of Article 5 para. 4 (Art. 5-4) of the Convention.

The Commission considers, in the light of the parties' submissions, that the case raises complex issues of fact and law under the Convention, the determination of which should depend on an examination of the merits of the application as a whole. The Commission concludes, therefore, that the application is not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the

Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

M. de SALVIA Secretary to the Commission	S. TRECHSEL President of the Commission