AS TO THE ADMISSIBILITY OF

Application No. 38697/97
by Stuart BLACKSTOCK
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 September 1998, the following members being present:

MM	M.P. PELLONPÄÄ, President
	N. BRATZA
	E. BUSUTTIL
	A. WEITZEL
	C.L. ROZAKIS
Mrs	J. LIDDY
MM	L. LOUCAIDES
	B. MARXER
	B. CONFORTI
	I. BÉKÉS
	G. RESS
	A. PERENIČ
	C. BÎRSAN
	K. HERNDL
	M. VILA AMIGÓ
Mrs	M. HION
Mr	R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 3 June 1997 by Stuart BLACKSTOCK against the United Kingdom and registered on 20 November 1997 under file No. 38697/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant was born in 1954 and is a British citizen, currently detained at Nottingham Prison. This is his third application to the Commission. The first two, Nos. 11616/85 and 11617/85, were declared inadmissible on 6 and 13 May 1986 respectively. The facts of the case, as submitted by the applicant, may be summarised as follows.

In June 1981 the applicant was convicted of wounding a policeman. A discretionary life sentence was imposed. Two fixed sentences were also imposed, for attempted robbery (15 years) and possession of a firearm (5 years), to run consecutively to each other but concurrent with the life sentence. On appeal, the Court of Appeal confirmed the sentence of life imprisonment but reduced the fixed sentences to a total of 15 years. The final Court of Appeal decision was given on 25 May 1982.

In 1995, the applicant's "tariff" or punitive part of his sentence (which was not set at the time of sentencing) was reduced from 20 to 17 years on the recommendation of the Lord Chief Justice. His tariff therefore expired on 26 February 1998.

In August 1996, in the course of representations to the Parole Board, the applicant requested release before the expiry of his "tariff" period as in the Court of Appeal one of the judges had commented that there was a reasonable chance that the applicant would be let out before 15 years.

In August and November 1996, the applicant wrote to the Home Secretary requesting a reference of his case back to the Court of Appeal for reconsideration of the validity of his sentence.

In a letter dated 26 February 1997, the Home Office informed the applicant that such a request was refused because the issues raised by the applicant had already been dealt with at the original trial and on appeal. The letter stated:

"...there do not appear to be any grounds on which the Home Secretary would think it right to refer your sentence back to the Court of Appeal.

...

The issues you have raised in respect of your sentence refer to matters which were clearly aired in court at trial or on appeal. Consequently these do not represent grounds to justify reference back to the Court of Appeal or for any other action on the part of the Home Secretary in relation to your sentence of life imprisonment."

In May 1996, a Parole Board commenced a review of the applicant's case with a view to determining whether he should be moved to open prison conditions and if so, to quantify the risk involved. The Board was charged with making a recommendation with regard to a move to open conditions but not to comment on the security classification of the applicant in the closed prison in which he was detained at the time. On 14 January 1997, the applicant received a letter from the Board dated 3 January notifying him that he

still posed too high a risk for a move to open conditions. The Parole Board gave the following reasons for its decision:

"...[the applicant] has a history of poor behaviour in prison, including assaults on staff. The Panel notes the steps he has taken to improve his education and prospects of employment, as a result of which a more favourable picture of his progress is emerging. However he has not as yet fully and formally addressed important areas of concern - the bearing of firearms and display of intimidating behaviour during two attempted robberies, his long standing drug problem, his persistently hostile stance towards authority and his resorting to violence in custody when frustrated or threatened until quite recently.

Moreover none of the reports recommend a move to open conditions. Until relatively recently his behaviour caused a high level of concern and there are indications that he continues to minimise his involvement in the offence. The Panel cannot accept [the applicant's] view that he no longer presents a risk. They consider that until the above areas of concern are adequately addressed [the applicant] will continue to pose too high a risk for a move to open conditions and must demonstrate continuing progress before this can be considered..."

They further informed him that the next formal review of his case would be by a Discretionary Lifer Panel of the Parole Board following the expiry of his tariff.

The applicant states that a computer and printer which he used for Open University studies and for the preparation of his case before the Parole Board were confiscated in 1996 for security and austerity reasons while he was at H.M. Prison Full Sutton. On his transfer to H.M. Prison Nottingham in 1997, he was still denied access to his computer. He has submitted a letter from the Prison Service to his representatives dated 5 June 1996 which states that:

"All prisons operate a privilege list, this consists of articles that are allowed to be held in possession by prisoners. Unfortunately, the item that your client is requesting is not allowed on the Full Sutton Prison Privilege List.

The purpose of the list is both for security reasons in that the amount of property held is a factor and for austerity reasons. Word processors and computers present peculiar security problems in accessing their memories and hardware."

The applicant states that he has been told as recently as 30 October 1997 that he will never be allowed any access to computing equipment of any type "because you hacked into another prison's network and abused this privilege". The applicant denies the allegation, stating that it relates to an allegation by an education officer at Full Sutton prison that he had "hacked" into the prison system at a time when there was not, in fact, a computer system.

COMPLAINTS

The applicant complains about his original sentence, the trial at first instance, the appeal to the Court of Appeal, the refusal of leave to appeal to the House of Lords and the recent refusal by the Home Secretary to refer his case back to the Court of Appeal. He alleges breaches of Article 3, Article 5 paras. 1 (e) and 4, Article 6 para. 1 and Article 7 para. 1 of the Convention. He complains that both the trial at first instance and the appeal were unlawful in sentencing him to life imprisonment. He maintains that these breaches are continuing and therefore not excluded by the six-month rule. The applicant also complains that the length of the sentence he was actually to serve was not determined by a court.

He also complains about the decision and procedures of the Parole Board and invokes Articles 5 para. 1 (e) and 4, Article 6 paras. 1, 2, 3 (a), (b), (c) and (d) and Article 7 para. 1 of the Convention. He complains that he cannot challenge the findings of the Parole Board and that their decision, made in secret, without the presence of either the applicant or a representative, was unfair, impartial and unlawful.

He further complains that his computer, which he needs for educational purposes and in order to prepare his case, was confiscated by the prison authorities. He alleges breaches of Article 6 para. 3 (c) and Articles 1 and 2 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant alleges breaches of the Convention in respect of his original trial and appeal and the imposition of the discretionary sentence of life imprisonment. He claims that these are ongoing breaches of Article 3, Article 6 para. 1 and Article 7 para. 1 of the Convention.

The Commission recalls that, in accordance with Article 26 of the Convention, it may only deal with a matter within a period of six months from the date on which the final decision was taken. The final decision referred to in connection with the applicant's trial and sentencing was the Court of Appeal decision of 25 May 1982, whereas the present application was introduced on 3 June 1997, that is, more than six months after that final decision. The fact that the applicant remains in detention does not prevent the running of the six months period in respect of the trial and appeal, which ended in 1982. The applicant's request to the Home Secretary for the sentencing part of his trial to be reopened cannot affect the position, either, as the proceedings were not reopened. The determination of the criminal charges against the applicant therefore ended with the Court of Appeal's decision of 25 May 1982.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 of the Convention.

2. The applicant also complains, by reference to Articles 3 and 6 of the Convention, that the decision of how long he would remain in prison was not taken by a court.

Again, the Commission refers to the six months time limit set out in Article 26 of the Convention. In his written representations to the Parole Board of August 1996, the applicant requested release before the expiry of his tariff period. He must therefore have been aware in August 1996 at the latest of the existence of the tariff and the fact that it had not been set by a judge. However, the application was introduced only on 3 June 1997.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 of the Convention.

3. The applicant alleges a violation of Article 5 para. 1 of the Convention. He contends that his original sentence was wrong in that it is a necessary part of a discretionary life sentence that a person be of unsound mind, whereas it is clear from the judgments in his case that the disrcetionary life sentence was imposed not for mental health reasons, but for punishment reasons. He contends that if a fixed sentence had been imposed at the time, he would by now have been released.

The Commission recalls that it has declared inadmissible the applicant's complaints concerning the original trial and sentence for failure to comply with the six months rule contained in Article 26 of the Convention.

The Commission further recalls that in the case of Weeks (Eur. Court HR, Weeks v. the United Kingdom judgment of 2 March 1987, Series A no. 114, p. 27, para. 51), the European Court of Human Rights considered that the applicant's detention under a discretionary life sentence was still justified by reference to the original conviction some 19 years after the conviction, and notwithstanding several periods when he was released on licence. In the subsequent case of Thynne, Wilson and Gunnell (Eur. Court HR, Thynne, Wilson and Gunnell v. the United Kingdom judgment of 25 October 1990, Series A no. 190-A), it became apparent that during an initial period of a "discretionary lifer's" detention, the detention was justified by reference to punitive elements "the tariff period", and thereafter by reference to preventive considerations.

The applicant's "tariff" period expired in January 1998, after the facts complained of in the present application.

The Commission finds that the applicant's detention from the imposition of the discretionary life sentence in 1982 and unbroken until the expiry of the "tariff" period in 1998 falls to be considered as compatible with Article 5 para. 1 (a) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

4. The applicant complains that the Parole Board's review did not meet the requirements of Article 5 para. 4 of the Convention.

Article 5 para. 4 of the Convention provides as follows:

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

The Commission recalls that the case-law of the Commission and the Court establishes that prisoners serving a discretionary life sentence are entitled under the above provision to take proceedings to have the lawfulness of their detention decided by a court where the punitive or "tariff" period of their sentence has expired (see Eur. Court HR, Weeks v. the United Kingdom judgment of 2 March 1987, Series A no. 114 and Thynne, Wilson and Gunnell v. the United Kingdom judgment of 25 October 1990, Series A no. 190).

In the present case, at the time of the Parole Board's review, the applicant was still serving the tariff part of his sentence which did not expire until February 1998. The applicant cannot therefore claim to be a victim of a violation of Article 5 para. 4 (see No. 18757/91, Dec. 14.10.92, unpublished).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

5. The applicant also alleges further breaches of the Convention in connection with the decisions of the Parole Board. He invokes Article 6 paras. 1, 2, 3 (a), (b), (c) and (d) and Article 7 para. 1 of the Convention.

The Commission notes that the proceedings before the Parole Board did not determine a criminal charge against the applicant or any of his civil rights or obligations. Article 6 paras. 1 and 3 cannot therefore apply to them. Further, as the applicant was not found guilty of a criminal offence in those proceedings, Article 7 cannot apply, either. There is no indication in the facts of the case of an infringement of Article 6 para. 2 of the Convention.

The Commission thus finds that the matters complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols and must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

6. The applicant further complains that his computer has been confiscated by the prison authorities. He invokes Article 6 para. 3 (c) of the Convention and Articles 1 and 2 of Protocol No. 1 to the Convention.

The Commission first notes the applicant was not "charged with a criminal offence" within the meaning of Article 6 para. 3 of the Convention in connection with the

proceedings before the Parole Board or in connection with his application for his original sentence to be referred to the Court of Appeal, and so the matter of his computer cannot affect his rights under that provision.

In connection with the applicant's property rights, the Commission notes that the refusal by the authorities at Full Sutton Prison to let the applicant have a word processor or computer in his cell was dated 5 June 1996, and the applicant does not appear to have pursued any domestic remedies in respect of the refusal. The question may therefore arise whether the applicant has complied with the rule on exhaustion of domestic remedies or, if there are none, whether he has complied with the six months time limit set out in Article 26 of the Convention. In any event, there is no indication that the applicant's material has been confiscated: at most, he was prohibited from using a computer or word processor, and there is no indication that such a "control of use" was not compatible with the provisions of Article 1 of Protocol No. 1 to the Convention.

As to the right to education, referred to in Article 2 of Protocol No. 1 to the Convention, and assuming that the provision applies to prisoners, the Commission notes that the applicant has not shown that he has in fact been prevented from pursuing his studies by the limitation on the use of computer facilities.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber