AS TO THE ADMISSIBILITY OF

Application No. 21309/93
by Desmond FINNEGAN
against the United Kingdom

The European Commission of Human Rights sitting in private on 28 November 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS

Mr. H.C. KRÜGER, 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 15 November 1992 by Desmond FINNEGAN against the United Kingdom and registered on 2 February 1993 under file No. 21309/93;

Having regard to :

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

Having deliberated;

Decides as follows:

THE FACTS

The facts as submitted by the applicant may be summarised as follows.

The applicant is an Irish citizen born in 1945 and is currently serving a sentence of life imprisonment in HM Prison Gartree.

A. Particular circumstances of the case

The applicant was convicted of murdering his girlfriend in July 1974 and was sentenced to life imprisonment.

In June 1987 the applicant was released on licence. In December 1987 the applicant was returned to prison following a charge of wounding the woman with whom he had been living. In or around June or July 1988 he was convicted on this charge and he received a sentence of four years' imprisonment. His licence was then revoked.

The applicant's case was reviewed by the Parole Board in May 1990 but he was not recommended for release. His case was again reviewed by the Parole Board in November 1992 and he was informed, in June 1993, that the Parole Board had declined to recommend his release. The applicant's next review date has been set for May 1995.

B. Relevant domestic law and practice

In addition to the facts as submitted by the applicant the Commission has had regard to the outline of relevant domestic law and practice in the judgment of the European Court of Human Rights in the Wynne case (judgment of 18 July 1994, Series A no. 294-A, paras. 12-23). In particular the Commission has noted the following:

1. Life sentences

Murder carries a mandatory sentence of life imprisonment under the Murder (Abolition of Death Penalty) Act 1965.

A life sentence may also be passed, in the exercise of the court's discretion, on a person convicted of any of the offences for which life imprisonment is provided by the relevant legislation as the maximum penalty for the offence concerned - a discretionary life sentence. Broadly speaking, the use of such a discretionary life sentence is reserved for cases where the offence is grave and it appears that the accused is a person of unstable character likely to commit such offences in the future, thus making him dangerous to the public in respect of his probable future behaviour unless there is a change in his condition.

The Criminal Justice Act 1991 ("the 1991 Act") introduced changes to the procedures for the release of discretionary life prisoners to reflect the fact that reviews, complying with Article 5 para. 4 of the Convention, are required in respect of the non-punitive period of discretionary life sentences. These changes were not extended to mandatory life prisoners.

In the course of the debate in the House of Commons in respect of what was to become the 1991 Act, the Minister of State for Home Affairs explained, inter alia, the difference between mandatory and discretionary life sentences, and described mandatory life sentences as follows:

> "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."

However the English courts have recognised, in determining the principles of fairness that apply to the procedures governing the review of mandatory life sentences, that the mandatory sentence is, like the discretionary sentence, composed of both a punitive period ("the tariff") and a security period, the latter period being linked

to the assessment of the prisoner's risk to the public following the expiry of the tariff.

The English courts have also recognised that there continues to be a gap between the theory and practice in respect of mandatory life sentences (R. v. Secretary of State for the Home Department, ex parte Doody [1993] 3 All England Reports 92). In that case Lord Mustill, with whom the other Law Lords agreed, went on to state that, while the mandatory life sentence may be converging with the discretionary life sentence, nevertheless there remained a substantial gap between the two types of sentences and it would be a task for Parliament to further assimilate the effect of the two types of life sentences.

2. Release of life prisoners on licence and revocation of a licence

The Criminal Justice Act 1967 ("the 1967 Act") contained the relevant statutory provisions in respect of Parole Board reviews and the powers of the Secretary of State in this regard. These provisions have been incorporated into the 1991 Act since October 1992 and continue to apply to mandatory life prisoners.

Pursuant to the above legislation the Secretary of State may, after certain consultations, release on licence a person if recommended to do so by the Parole Board. The Secretary of State may revoke the licence of a person either on his own initiative or on the recommendation of the Parole Board. 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. The effect of a revoking a licence is that the person is liable to be re-detained in pursuance of his original sentence (formerly section 62(9) of the 1967 Act).

COMPLAINTS

The applicant complains under Article 3 of the Convention, in relation to the length of his detention and alleged maltreatment by prison officers. He also complains under Article 5 paras. 4 and 5 of the Convention in relation to the reviews conducted by the Parole Board in respect of his detention. Finally, the applicant invokes Article 6 paras. 2 and 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 15 November 1992 and was registered on 2 February 1993.

On 3 May 1993 the Commission decided to communicate the applicant's complaints under Article 5 para. 4 of the Convention to the respondent Government without requesting observations.

By letter dated 4 August 1994 the Secretariat of the Commission provided the applicant with a copy of the judgment of the Court in the Wynne case (Eur. Court H.R., Wynne judgment of 18 July 1994, Series A 294-A), requesting the applicant to inform the Commission whether, in light of that judgment, the applicant wished to maintain his case.

By letter dated 18 August 1994 the applicant confirmed that he wished to continue with his application.

On 3 September 1994 the Commission decided to continue its examination of the admissibility of the application without seeking the observations of the Government.

THE LAW

1. The applicant complains under Article 3 (Art. 3) of the

Convention, in relation to the length of his ongoing detention and alleged maltreatment by prison officers.

Article 3 (Art. 3) of the Convention reads as follows:

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

In relation to the applicant's complaint about the length of his life sentence, the Commission recalls that Article 3 (Art. 3) of the Convention cannot be read as requiring that an individual serving a sentence of life imprisonment must have that sentence reconsidered by a national authority (judicial or administrative) with a view to its remission or termination (No. 11635/85, Dec. 3.3.86, D.R. 46 p. 237). In the present case the Commission notes that the applicant is serving a sentence of life imprisonment.

As to whether there are particular factors in the present case which would bring the applicant's detention within the scope of Article 3 (Art. 2) of the Convention, the Commission recalls that, according to the constant case-law of the Convention organs, the treatment in respect of which an applicant complains must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) of the Convention. The assessment of the minimum is relative and depends, therefore, on all the circumstances of the case (see, for example, No. 8463/78, Dec. 9.7.81, D.R. 26 p. 49 and Eur. Court H.R., Ireland v. United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162).

The Commission has examined all of the submissions of the applicant but does not consider that, in the circumstances of this case, the treatment of which the applicant complains reaches the threshold of severe ill-treatment prohibited by Article 3 (Art. 3) of the Convention. The Commission therefore finds this aspect of the application manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

In relation to the applicant's complaint under Article 3 (Art. 3) of the Convention about alleged maltreatment by prison officers, the Commission finds that the applicant has not shown that he has complied with Article 26 (Art. 26) of the Convention as regards exhaustion of domestic remedies. It does not appear from the case-file that the applicant has pursued any civil action for assault or other tort against a prison officer. Accordingly the Commission finds this complaint inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant complains under Article 5 para. 4 (Art. 5-4) of the Convention in relation to the Parole Board reviews which have been conducted in respect of his detention. He also complains under Article 5 para. 5 (Art. 5-5) of the Convention that he has no enforceable right to compensation in this regard.

Article 5 paras. 4 and 5 (Art. 5-4, 5-5) of the Convention read as follows:

"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 his detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Commission recalls the judgment of the European Court of Human Rights in the case of Wynne v. the United Kingdom (Eur. Court

H.R., judgment of 18 July 1994, to be published in Series A no. 294-A). In that case the applicant received a mandatory life sentence and was released on licence, which licence was subsequently revoked. It was found by the Court that the legal basis for his continuing detention was a mandatory life sentence (although "supplemented" by a subsequent discretionary life sentence). The applicant in the Wynne case submitted that the distinction between mandatory and discretionary life sentences, set out in the Thynne, Wilson and Gunnell case (Eur. Court H.R., Thynne, Wilson and Gunnell judgment of the 25 October 1990, Series A no. 190), was no longer valid referring in support of his arguments to recent domestic practices, case-law and official pronouncements. Therefore, the applicant in the Wynne case argued that he was entitled to a review complying with Article 5 para. 4 (Art. 5-4) of the Convention. The Court in the Wynne case (loc. cit., paras. 35-36), however, found as follows:

> "..... the fact remains that the mandatory life 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 ..... 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 ..... - does not alter this essential distinction between the two types of life sentence .....
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> ..... 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 sentence ..... 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."

In the present case the Commission notes that the applicant was sentenced to a mandatory life sentence and was released on licence, which licence was revoked following his conviction for another offence. It is also noted that the applicant was then re-detained in pursuance of the original mandatory life sentence (section 62 (9) of the 1967 Act).

The Commission further notes that the applicant has submitted no evidence to demonstrate that the character of the mandatory life sentence has changed in domestic law. It remains a sentence imposed automatically as punishment for the offence of murder irrespective of considerations pertaining to the dangerousness of the offender. The Commission therefore finds, as did the Court in the above-mentioned Wynne case, that the applicant has advanced no cogent reason to depart from the finding in the Thynne, Wilson and Gunnell case (loc. cit.).

Accordingly, the Commission concludes that the guarantees provided by Article 5 para. 4 (Art. 5-4) of the Convention were satisfied by the original trial and appeal proceedings (if any) of the applicant. It finds that no new issues of lawfulness arose in relation to the applicant's detention which entitled the applicant to a review under Article 5 para. 4 (Art. 5-4) of the Convention.

As no appearance of a violation of either paragraph 4 or paragraphs 1 to 3 of Article 5 (Art. 5-1, 5-2, 5-3, 5-4) of the Convention has been established in the present case, the applicant is not entitled to an enforceable right to compensation under Article 5 para. 5 (Art. 5-5) of the Convention.

It follows that the Commission must reject the complaints of the applicant under Article 5 paras. 4 and 5 (Art. 5-4, 5-5) of the Convention as manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

3. Finally, the applicant complains under Article 6 paras. 2 and 3 (Art. 6-2, 6-3) of the Convention, but does not specify the nature of the alleged violation of these provisions.

The Commission has examined the matters raised by the applicant, but finds no evidence in the case-file which might disclose any appearance of a violation of Article 6 paras. 2 or 3 (Art. 6-2-, 6-3) of the Convention. The Commission therefore finds the applicant's complaints in this regard manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)