AS TO THE ADMISSIBILITY OF

Application No. 26293/95
by Arthur HOSEIN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 28 February 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 14 December 1994 by Arthur HOSEIN against the United Kingdom and registered on 25 January 1995 under file No. 26293/95;

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 facts as submitted by the applicant are as follows:

The applicant is a citizen of the United Kingdom born in 1936 and is presently detained in Ashworth Hospital, Maghill, Liverpool. Before the Commission, he is represented by Mr. Stephen Rees, a solicitor.

In 1979, the applicant was convicted of blackmail, false imprisonment, kidnapping and murder and given a mandatory life sentence with a tariff of 20 years. His case was considered by the Parole Board in November 1987, when it was decided that his case would be considered again in February 1993. In the intervening period his health declined and he was transferred to Ashworth Hospital, Liverpool. Since he has been in Ashworth Hospital he has not had his detention reviewed by the Parole Board. The Home Secretary refused his application for a review by the Parole Board on 2 September 1994.

COMPLAINTS

The applicant complains that, as a result of becoming mentally-ill subsequent to his sentence and during his detention, he lost his right to have his sentence reviewed by the Parole Board after 20 years. He claims that had the Parole Board reviewed his sentence it could have ordered his release because (1) he had passed his tariff and (2) he now

presents no risk to society. He complains that a Mental Health Review Tribunal could not order his release and that he is therefore being subjected to a penalty which is heavier than the one applicable at the time the offence was committed, in violation of Article 7 of the Convention. He submits that, while he is not wrongly detained in the hospital on grounds of his mental health, he should be released from prison as no longer posing a risk and treated, if necessary, in an ordinary hospital in the normal way.

THE LAW

1. The applicant complains of a violation of Article 7 (Art. 7) of the Convention, contending that as a result of his becoming ill during his detention and being transferred to a mental hospital, he has been refused the parole hearing that he would have had if he had been detained in prison. He claims that the parole hearing would have resulted in his release and that in effect therefore, a heavier penalty has been imposed than at the time of sentence.

Article 7 (Art. 7) provides, so far as relevant:

> "...Nor shall a heavier penalty be imposed than the one that was applicable at the time of the criminal offence was committed".

The Commission notes that the penalty imposed on the applicant at the time that the crime was committed was one of mandatory life imprisonment and that remains the case. While the expiry of the "tariff period" generally gives rise in practice to review of mandatory life prisoners', the Commission recalls that expectations with regard to release on parole do not affect "penalty" imposed for the purposes of Article 7, matters of parole for mandatory life prisoners relating to the execution of their sentence (see eg. No. 11653/85, Dec. 3.3.86 D.R. 46, p. 231). Consequently, the Commission does not find that the applicant's inability, while detained in hospital for treatment, to obtain a parole hearing, can be construed as imposing a heavier penalty than that imposed on him by the judge at his trial.

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

2. The Commission has also examined the applicant's complaint under Article 5 para.4 (Art. 5-4) of the Convention, which enshrines the right of an individual to take proceedings to determine the lawfulness of his detention. Article 5 para.4 (Art. 5-4) provides:

> "Everyone 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 notes that the applicant was given a mandatory sentence of life imprisonment. The Court and Commission has consistently held that in the case of mandatory life sentences, the fact that there is a "tariff" period, to reflect the requirement of retribution and deterrence, and a subsequent security element, confers no additional right to challenge the lawfulness of continuing detention. The sentence is imposed automatically as the punishment for the offence of murder, irrespective of considerations pertaining to the dangerousness of the offender. The guarantee of Article 5 para. 4 (Art. 5-4) is considered to be satisfied by the original trial and appeal proceedings (see eg. Eur. Court H.R. Wynne v. United Kingdom judgment of 18 July 1994, Series A no. 294-A, paras. 35-36 and Thynne Wilson and Gunnell v. the United Kingdom judgment of 25 October 1990, Series A no. 190-A pp. 27 and 29 paras. 70, 73-74).

The Commission does not consider that the fact that the applicant was transferred to Ashworth Hospital in any way affects the basis of his detention as a mandatory life prisoner for the purposes of Article 5 para. 4 (Art. 5-4). The Commission notes that the applicant does not complain of any wrongful detention in hospital on grounds of mental health, merely that he is held as a prisoner and deprived of the possibility of being treated as an ordinary patient.

It follows that this complaint must also be rejected as 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 First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)