AS TO THE ADMISSIBILITY OF

Application No. 19000/91
by M.M.
against the United Kingdom

The European Commission of Human Rights (Second Chamber) sitting in private on 2 April 1992, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H. G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
Sir Basil HALL
Mr. A.V. ALMEIDA RIBEIRO

Mr. K. ROGGE, Secretary to the Second 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 8 October 1991 by M.M. against the United Kingdom and registered on 25 October 1991 under file No. 19000/91;

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 is a British citizen born in 1973. He is currently detained at HM Prison Maghaberry, Northern Ireland, where he is serving a sentence of 6 years' imprisonment.

The applicant is represented in the proceedings before the Commission by Mr. K. Winters, a solicitor practising in Belfast.

The facts, as submitted by the applicant and as may be obtained from the documents submitted with the case-file, may be summarised as follows.

On 23 May 1991, the applicant was convicted in Belfast Crown Court of robbery and taking and driving away a car. He was sentenced to 6 years' imprisonment.

Robbery is a scheduled offence within the meaning of the Northern Ireland (Emergency Provisions) Act 1978, where it is charged that an explosive, firearm, imitation firearm or weapon of offence was used to commit the offence.

Under Section 22 of the Prevention of Terrorism (Temporary Provisions) Act 1989, remission granted in respect of a sentence of imprisonment passed in Northern Ireland for a scheduled offence shall not, where the sentence is for five years or more, exceed one third of that term. Remission granted in respect of a sentence of imprisonment

passed in Northern Ireland for non-scheduled offences shall not exceed one half of the appropriate term. The applicant's current release date is accordingly 5 January 1996 instead of 5 January 1995.

COMPLAINTS

The applicant complains that he is serving a longer period of imprisonment because of the perceived political character of his offence. He invokes Article 14 taken together with Article 5 of the Convention.

The applicant also complains that he is unable to challenge the statutory provision which restricts remission for scheduled offences. He invokes Article 13 of the Convention.

THE LAW

1. The applicant complains that he is discriminated against since he is serving a longer period of imprisonment because of the political character of his offence. He invokes Article 14 in conjunction with Article 5 (Art. 14+5) of the Convention. These provisions as relevant provide:

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."

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;..."

The case-law of the Commission indicates that complaints concerning the length of sentence passed after due process of law do not generally fall within the scope of the Convention (No. 5871/72, Dec. 30.9.74, D.R. 1 p. 54). However, where a settled sentencing policy appears to affect individuals in a discriminatory fashion, the Commission has taken the view that this may raise issues under Article 14 read in conjunction with Article 5 (Art. 14+5) of the Convention (see e.g. No. 11077/84, Dec. 13.10.86, D.R. 49 p. 170).

The Commission recalls that the rules concerning release on remission are different in relation to "scheduled offences". These offences attract the maximum of one third remission in sentence as opposed to the one half applicable to other offences.

The Commission recalls that not every difference in treatment is contrary to Article 14 (Art. 14) of the Convention. In particular, Article 14 (Art. 14) safeguards individuals placed in similar positions from any discrimination in the enjoyment of the rights and freedoms set out in the Convention and Protocols (see e.g., Eur. Court H.R., Marckx judgment of 13 June 1979, Series A no. 31).

The applicant in this case seeks to compare himself with persons convicted of different offences. A person convicted of one offence is however not in a comparable position to that of a person convicted of another offence in relation to the question of sentencing and the possibility of early release. The same considerations will not necessarily apply in all cases. It is obvious that Contracting States

may differentiate between types of offences in fixing applicable penalties. The Commission considers that they may also legitimately make distinctions between different kinds of offences in determining at what stage prisoners should be released.

Consequently, the Commission finds that the difference of treatment in this case does not constitute discrimination within the meaning of Article 14 of the Convention read in conjunction with Article 5 (Art. 14+5).

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

2. The applicant also invokes Article 13 (Art. 13) of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, Article 13 (Art. 13) does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52).

The Commission recalls that it found the applicant's substantive complaint under Article 14 (Art. 14) to be manifestly ill-founded and for the same reasons finds that the applicant cannot be said to have an "arguable claim" of a violation of that provision.

It follows that this part of the application must 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 Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)