AS TO THE ADMISSIBILITY OF

Application No. 32072/96
by Craig Jason MANSELL
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
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 16 February 1996 by Craig Jason MANSELL against the United Kingdom and registered on 28 June 1996 under file No. 32072/96;

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 44-year-old British national, represented by Mr. R. Whitehead, solicitor, of Messrs. Paul Crowley & Co., Liverpool.

A. Particular circumstances of the case

On 17 December 1992 the applicant was convicted at Knutsford Crown Court on three counts of indecent assault on men. The men assaulted were aged between 18 and 22 at the time of the assaults.

The applicant had been previously convicted in 1986 for indecent assault and kidnapping an 18 year old man.

In sentencing the applicant the judge stated that although the sentence of two and a half years would normally be appropriate for an act of indecent assault, for reasons of protection of the public, in his judgment the proper sentence in this case was five years imprisonment.

The Court of Appeal reviewed the sentence and determined that in

sentencing the applicant for a sentence "longer than normal", the judge was acting pursuant to Section 2(2)(b) of the Criminal Justice Act 1991. The applicant`s parole "eligibility date" under his five year sentence was determined to be 15 June 1995.

The Parole Board considered the case on the papers and on 9 August 1995 decided that the applicant was not suitable for parole. The applicant was interviewed by a member of the Parole Board, who submitted the applicant`s point of view to the panel, which decided his case.

The applicant applied for judicial review of the decision of the Parole Board to the High Court of Justice. He claimed that the decision of the Parole Board was defective in that he was not afforded an oral hearing before the Board. On 7 March 1996 the High Court refused the application finding that the applicant was not sentenced conditionally and that the rules which apply to the discretionary life sentences do not apply in the applicant`s case.

The applicant was released from prison on 15 April 1996.

B. Relevant domestic law

Section 2 of the Criminal Justice Act 1991 provides:

"(1) This section applies where a court passes a custodial sentence other than one fixed by law.

(2) The custodial sentence shall be:

(a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and [one or more] offenses associated with it; or

(b) where the offence is violent or sexual offence for such longer term (not exceeding the maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.

(3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence,..., the court shall:

(a) state in open court that it is of the opinion that Subsection (2)(b) above applies...

(b) explain to the offender in open court and in ordinary language why the sentence is for such a term.

(4) A custodial sentence for an indeterminate period shall be regarded for the purposes of Subsections (2) and (3) above as a custodial sentence for a term longer than any actual term."

COMPLAINTS

The applicant invokes Article 5 para. 4 of the Convention.

He claims that his "longer than normal" sentence should have attracted a special form of parole review from the moment that he served the period he would have served under the normal punitive sentence. This means the sentence he would have received if his sentence had not been lengthened to protect the public. He claims that he should have had a review after 15 months in custody to test the

justification of his continued detention. That review should have been before a panel of the Parole Board operating like a discretionary lifer panel, i.e. they should have given the applicant an oral hearing and the Home Secretary should have no power to veto its recommendations. It is argued that the applicant`s right was violated by the denial of an oral hearing before the board, by the delay in his first review and by the Home Secretary`s veto power.

THE LAW

The applicant complains under Article 5 para. 4 (Art. 5-4) of the Convention that he should have been entitled to a special review to decide on the lawfulness of his detention. He considers himself as being in the same position as the so-called discretionary life prisoners in that his sentence consisted of a punitive part and a "preventive part" in which his danger to the public and therefore lawfulness of detention should be properly reviewed. Consequently only an oral hearing would ensure that the applicant`s mental state is fairly assessed.

Article 5 para. 4 (Art. 5-4), 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 first recalls that the supervision required by Article 5 para. 4 (Art. 5-4) is normally incorporated in the decision, where sentence of imprisonment is pronounced after conviction by a competent court (Eur. Court HR, De Wilde, Ooms and Versyp v. Belgium judgment of 18 June 1971, Series A no. 12, p. 40, para. 76). However, this does not apply to detention subsequent to a sentence or detention in which new issues might arise, such as the detention of persons of unsound mind, where the reasons initially warranting detention may cease to exist. Such is the case for prisoners subject to discretionary life or indeterminate sentences (Eur. Court HR, Weeks v. the United Kingdom judgment of 2 March 1987, Series A no. 114, p. 29, para. 58; Thynne, Wilson and Gunnell v. the United Kingdom judgment of 25 October 1990, Series A no. 190, p. 30, para. 76; Singh v. the United Kingdom judgment of 21 February 1996, to be published in Reports 1996).

In the present case, the Commission must determine whether the applicant was entitled, under Article 5 para. 4 (Art. 5-4) of the Convention, to a further review of the lawfulness of his detention after the expiry of the first two and a half years of his sentence.

The sentence imposed on the applicant was a fixed term sentence of five years. There is no question of the sentence being imposed because of the presence of factors which "were susceptible to change with the passage of time, namely mental instability and dangerousness" (above-mentioned Thynne, Wilson and Gunnell judgment, p. 29, para. 73). Rather, there was an element of "simple" punishment as well as an element of deterrence. It is true that the latter part of the sentence was imposed pursuant to Section 2 of the Criminal Justice Act 1991, which provides for sentences in the case of violent or sexual offenses to be longer than "normal" in order to protect the public from serious harm. Such an "increased" sentence is, however, no more than the usual exercise by the sentencing court of its ordinary sentencing powers, even if the "increase" has a statutory basis. In particular, nothing in the sentencing procedure indicates that the fixed term sentence of five years imprisonment was anything other than a sentence which was imposed as punishment for the offenses committed.

It follows that the judicial control required by Article 5 para. 4 (Art. 5-4) of the Convention was incorporated in the original conviction and sentence, and that Article 5 para. 4 (Art. 5-4) of the

Convention does not apply to the parole proceedings in which the applicant was denied an oral hearing.

It follows that the application is 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber