AS TO THE ADMISSIBILITY OF

Application No. 20433/92
by Mary McCOURT
against the United Kingdom

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

MM. J.A. FROWEIN, President of the First Chamber
E. BUSUTTIL
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First 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 1 May 1990 by Mary McCourt against the United Kingdom and registered on 4 August 1992 under file No. 20433/92;

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 1943 and resident in Wigan. She is represented by Mr. Robin Makin, a solicitor practising in Liverpool. The facts as submitted by the applicant may be summarised as follows.

On or about 9 February 1988, the applicant's 22 year old daughter Helen was murdered. Her body has never been found. A suspect, S., was arrested and convicted of murder on 14 March 1989. He was sentenced to life imprisonment.

The applicant is Helen's next of kin and the administratrix of her legal estate.

The applicant has suffered great distress and has searched continually but without success for her daughter's body. S. has not complied with her request to inform the authorities as to the location of her daughter's body.

On 7 May 1991, the applicant wrote to the Home Office requesting, inter alia, an assurance that S. would not be considered for parole and requesting that she be informed with regard to any parole decisions.

By letter dated 3 June 1991, the Home Office replied that her letter and accompanying document had been placed on S.'s file and would be seen by the Parole Board when it reviewed his case. She was informed that at the earliest his case would be reviewed in 2001 and that the Probation Service would contact her before S.'s release with a view to meeting any concern and could, for example, place restrictions as to where S. was to live, go or work on release.

The applicant's representatives wrote to the Home Office again on 7 August 1991 requesting, inter alia, information as to the "tariff" and an explanation of why no approval of the "tariff" was sought from the victim's family.

By reply dated 29 August 1991, the Home Office confirmed that the tariff was 16 years and stated that it was by no means certain that S. would be released then. It stated that the applicant could write at any time giving her views and that these would be placed before the Parole Board.

By further letter of 30 September 1991, the Home Office stated that a victim's family cannot be expected to take an impartial view and that it would be wholly inappropriate to involve them in the tariff setting process. It confirmed that if S.'s release was ever in prospect, the Probation Service would contact her.

COMPLAINTS

The applicant complains of a violation of Article 8 of the Convention in that she has no "right" to participate in the sentencing process, no "right" to be informed as to when S. will be released and no "right" to express views to those taking decisions as to his release.

The applicant also complains in the context of Article 8 of the absence of any provision for "bereavement" damages where the deceased child is over 18 years old. She submits that this does not reflect the enormity of the loss and is a lack of respect.

The applicant invokes Article 6 of the Convention in respect of the lack of a fair and public hearing within a reasonable time by an independent and impartial tribunal to establish the whereabouts of her daughter's body.

The applicant submits that the lack of procedure to establish the whereabouts of Helen's body includes her rights under Article 9 of the Convention.

In the context of Article 10 of the Convention, the applicant complains that she has no "right" to impart information as to her wishes in determining the effective length of S's sentence. She also submits she should enjoy a positive right to receive information as to his release.

The applicant further complains under Article 13 of the Convention that she has no remedy in respect of the above complaints.

Finally, she complains that there has been discrimination contrary to Article 14 of the Convention in that "bereavement" is not recognised because of her daughter's status as an unmarried adult, in that no procedure is available to trace her daughter's body since it has no status as "property" of commercial value and that her right to respect for family life is not recognised because Helen's 'status' is now that of a 'deceased person'.

THE LAW

1. The applicant complains under Article 8 (Art. 8) of the Convention that she has no right as such to be consulted in the sentencing or parole process.

Article 8 (Art. 8) of the Convention provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission notes that while the applicant has no "right"as such to be involved in the parole process the Home Office have a policy of accepting the submissions made by victims' families and placing them before the Parole Board. The Home Office also has a policy of informing relatives of the possible release of a prisoner in order to meet any concerns that they might have. As regards the failure to involve the applicant in setting the tariff, the Commission also recalls the explanation by the Home Office that victims' families do not have the requisite impartiality for involvement in the sentencing procedures. In light of these considerations , the Commission finds that the applicant's complaints fail to disclose any lack of respect for or any interference with her right to respect for family life.

The applicant also complains under Article 8 (Art. 8) of the Convention of the absence of provision for damages awardable in civil proceedings in respect of an adult child who dies in such circumstances. She submits that this in itself constitutes a lack of respect.

The Commission notes that there is in fact no indication on the file that the applicant had or would have any intention of suing the convicted murderer of her daughter for damages in civil proceedings. In any event, however, the Commission finds that the criminal law recognises the heinousness of the act committed in this case and provides for it a mandatory penalty of life imprisonment. The Commission does not consider that Article 8 (Art. 8) of the Convention can be interpreted as requiring in addition that civil proceedings take a particular form or provide damages to extended categories of relatives (see e.g. Eur. Court H.R., X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91).

The Commission concludes that the applicant's complaints are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also invokes Articles 6, 9, 10, 13 and 14 (Art. 6, 9, 10, 13, 14) of the Convention.

The Commission has examined the applicant's complaints as they have been submitted by her. It finds however that they fail to disclose any appearance of a violation of the rights guaranteed under the Convention.

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 First Chamber a.i. President of the First Chamber

(M. de SALVIA) (J.A. FROWEIN)