AS TO THE ADMISSIBILITY OF

Application No. 26667/95
by Richard O'HARA
against Ireland

The European Commission of Human Rights sitting in private on 2 September 1996, the following members being present:

Mr. S. TRECHSEL, President
Mrs. G.H. THUNE
Mrs. J. LIDDY
MM. E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGO

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 18 August 1994 by Richard 0'HARA against Ireland and registered on 8 March 1995 under file No. 26667/95;

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 applicant is a British citizen, was born in Belfast, Northern Ireland in 1953 and is currently serving a sentence of life imprisonment in Arbour Hill Prison, Dublin. The present application is the applicant's second application to the Commission. His first application (No. 23156/94) was declared inadmissible on 31 August 1994.

A. Particular facts of the case

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

On 29 March 1982 the applicant was convicted of the murder of a young girl and was sentenced by an Irish court, pursuant to section 2 of the Criminal Justice Act 1964, to a term of life imprisonment.

1. Reviews of the applicant's sentence

In May 1990 the applicant's case was reviewed by the Sentence Review Group and it decided not to recommend release. A further review was held in May 1992. By letter dated 8 December 1992, the applicant was informed that the Sentence Review Group declined to make a definitive recommendation to the Minister for Justice in his case at that time, but that they proposed to review his case again towards the end of 1995.

By letter dated 16 June 1993, the Minister for Justice, in response to an inquiry by a Member of Parliament (United Kingdom) on behalf of the applicant, confirmed that no distinction was made between the treatment of cases on grounds of nationality, each case being reviewed on its merits under the applicable criteria. He pointed out that the average sentence served by life prisoners was 11 not 8 years as stated by the applicant.

The applicant's last review took place on 22 November 1995 and the Department of Justice notified the prison Governor by letter dated 21 March 1996 that the Sentence Review Group was not prepared to make a recommendation to the Minister as to the applicant's release. The reasons cited were the seriousness of the applicant's offence and the applicant's consistent failure to engage in counselling with the therapeutic services available to him concerning his conviction for murder and his previous record. The letter noted that the applicant had applied for a transfer to a prison in the United Kingdom and wished the applicant every success. The applicant claims that he was told that unless he applied for a transfer to a prison in Northern Ireland he would "join the 30 year men" in the Irish prison system.

2. Alleged interference with the applicant's correspondence

Having suffered an accident in the prison, the applicant pursued a personal injury action against the prison with the assistance of his solicitors. The applicant has also been in correspondence with the Commission (since in or around October 1993) and with the Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("the CPT").

The applicant complained to the Governor of the prison about interference with his correspondence and he was directed to the Prison Visiting Committee. On 13 September 1994 the applicant lodged a complaint to that committee. The applicant claims that one member of that committee indicated that it was possible to print the logo of the Commission on an envelope. On 26 September 1994 the Governor of the prison informed the applicant that the committee had decided that all the applicant's correspondence (including religious material) would be censored.

(a) The applicant has submitted letters sent by the Commission to him in Arbour Hill prison all of which letters are stamped "Censor's Office" and dated 30 November 1994, 13 February 1995, 9 March 1995, 13 December 1995, 14 February 1996, 20 March 1996 and 29 March 1996. The letters of the Commission are sent in an envelope on which the words "The European Commission of Human Rights" are printed on the front and the words "the Council of Europe" together with the relevant logo are printed on the back.

(b) The applicant's letters to the Commission dated 31 August 1994,

5 September 1994, 26 and 29 September 1994, 2 October 1994, 7 November 1994, 30 January 1995, 26 February 1995, 20 January 1996, 7 February 1996, 4 March 1996, 19 March 1996, 9 April 1996, 10 April 1996, 24 April 1996 and 20 May 1996 are all stamped "Censor's Office". His letter dated 28 February 1996 to the Commission was sent to the Commission by the Governor of the prison.

(c) The applicant refers to his correspondence with the CPT. He claims that his letters to the CPT have been opened and read and that certain of those letters have been suppressed. The applicant has submitted a letter dated 22 February 1994 from the CPT to him which letter is also stamped "Censor's Office". The CPT's envelopes also have the words "Council of Europe", the relevant logo and the full title of the CPT (in English) printed on the outside.

(d) The applicant has also submitted letters from his solicitor dealing with his personal injury claim against the prison which are all stamped "Censor's Office" and dated 11 February 1994, 14 March 1994, 22 March 1994, 9 June 1994, 21 June 1994 (this letter contained a medical report prepared for the applicant's case against the prison), 13 September 1994 and 19 September 1994 (this latter letter was stamped "Censor's Office" on two different dates). The applicant has also submitted another letter dated 28 February 1996 from another firm of solicitors. The applicant had contacted that latter firm in relation to certain grievances as regards his sentence and the prison authorities. That letter was also stamped "Censor's Office". The envelope in which this letter was contained was marked "Private & Confidential, Legal Correspondence".

(e) The applicant has also submitted a religious magazine sent from an evangelistic association in the United States in a transparent plastic envelope which magazine was also stamped "Censor's Office" on 24 April 1996. He also submits that a Bible Concise Dictionary, sent by Kingston Bible Trust, was similarly stamped on 5 May 1994.

(f) Three letters from the AIRE Centre in London (a London based individual rights advice centre) dated 26 June 1995, 7 July 1995 and 30 November 1995 are also submitted by the applicant. These letters contained advice to the applicant in relation to, inter alia, his potential applications to the Commission and are stamped "Censor's Office".

(g) The applicant has submitted a letter from the Legal Aid Board in Dublin dated 6 July 1995, from the Probation Board for Northern Ireland dated 5 February 1992 and from the office of the Secretary to the President of Ireland dated 14 February 1996, all of which letters are stamped "Censor's Office". A letter from the British Embassy in Dublin to the applicant dated 29 April 1994 - containing a copy of a letter from that embassy to the Department of Justice (as regards a concession for the applicant in relation to telephone calls from the prison) and a copy of a letter from the Foreign and Commonwealth Office in London dated 4 March 1993 to a Member of Parliament (dealing with questions relating to the applicant's release) - is also submitted by the applicant. That letter and the copy letters enclosed are all stamped "Censor's Office".

(h) The applicant also submits that, having received a photocopy of a letter sent to him as opposed to the original, his solicitor advised him to request the prison authorities to furnish him with copies of certain letters previously sent to him (by Southern Health Board and the courts). The applicant claims that he made the request and received copies of those letters from the prison authorities.

3. Alleged suppression and delay of the applicant's correspondence and legal documents

The applicant alleges certain delays as follows:

- An application form to the Commission was delayed for three days by the prison authorities (23-26 November 1993);

- Documents were delayed between 3 and 5 August 1994;

- A newspaper entitled "Insidetime" (concerning prisoners' rights) is not arriving in the applicant's cell as it did before his first application to the Commission;

- A letter to the British Embassy in Dublin, posted by the applicant on 6 July 1994 through the prison authorities, was not received until 11 July 1994.

The applicant alleges that the following letters and documents were suppressed:

- A letter to the CPT dated 29 March 1994 and a follow-up letter dated 7 July 1994;

- A letter to a local radio station;

- Certain documents enclosed in a letter to Mr. Peter Robinson, Member of Parliament (United Kingdom);

- A report of the Northern Ireland Association for the Care and Resettlement of Offenders on 30 March 1992.

The applicant also submits that on 11 December 1995 he completed an affidavit in relation to a proposed constitutional action as regards, inter alia, the procedures before, and his unequal treatment by, the Sentence Review Group. The affidavit submitted appears to bear the signature of a Commissioner for Oaths dated 13 December 1995 and the applicant submits that, though the prison authorities told the Commissioner for Oaths that they would ensure that the affidavit would be transmitted to the court, the affidavit was not so sent.

On 10 January 1996 the Chief Officer in the prison gave the applicant a High Court form which was entitled "Statement required to ground application for judicial review by a personal applicant". The applicant completed this on 10 January 1996 believing that he received it in response to his affidavit. On 23 February 1996 the applicant appeared before a single judge of the High Court and discovered that his affidavit was not before the court. The judge made a number of suggestions to the applicant including writing to the Sentence Review Group. That judge also said that, if the applicant could prove discrimination, the applicant would be granted an order of mandamus and funds from the Attorney General to pursue the matter. The applicant did this and having no success wrote to that High Court judge on 28 February 1996. However, the applicant claims that the judge never received that letter.

4. Prison visits

The applicant submits that he is entitled to one visit of 30 minutes per week. Unused visits cannot be accumulated though the applicant can apply for an extended visit to be granted at the discretion of the prison Governor.

A letter dated 4 March 1993 from the Foreign and Commonwealth Office referred to a visit on 9 January 1993 in a private box by, inter alia, Ms. Brownlee, being cut short but the letter noted that it appeared that it was due to the volume of visitors on the day in question rather than a lack of cooperation by the prison authorities. A visit on 25 January 1993 from spiritual advisors was also referred to as having lasted almost an hour and half and another visit, from Ms. Brownlee, took place on 12 February 1993 and lasted half an hour.

The applicant claims that his request for extended time and for a private box for a visit from his female companion on 6 July 1994 was granted by the prison Governor but that he was not allowed these facilities on that day.

B. Relevant domestic law and practice

Prisoners' correspondence and the Prison Rules 1947

The rules for the government of prisons are contained in the Prison Rules 1947.

Rule 63, entitled "Prisoners' letters" reads as follows:

> "Every letter to or from a prisoner shall be read by the Governor, or other responsible officer deputed by the Governor, and initialled by him; and if the contents are objectionable, it shall not be forwarded, or the objectionable part shall be erased, according to discretion. The Governor shall use his discretion in communicating to or withholding from a prisoner at any time the contents of any letter addressed to the prisoner, but shall note in his journal every case in which he thinks it proper to withhold a letter which, according to the rules, might be communicated to or written by a prisoner."

COMPLAINTS

1. The applicant complains about interferences with his correspondence and invokes Articles 6, 8 and 13 of the Convention in this respect.

2. The applicant also complains about the decisions, the composition and the powers of the Sentence Review Group. He also complains about the results of his reviews before that tribunal and he claims that the tribunal discriminates against him on grounds of nationality. The applicant invokes Articles 5 para. 4 and 14 of the Convention.

3. The applicant further complains about the prison visit regime and the prison authorities' treatment of him in this respect. The applicant invokes Articles 8, 13 and 14 of the Convention.

THE LAW

1. In the first place, the applicant complains about interference with his correspondence. He submits that all his correspondence (including with the Commission, the CPT and his solicitors) is systematically opened and read by the prison authorities and that certain correspondence is copied onto his prison file, suppressed and delayed. The applicant submits that this constitutes a denial of his right of access to court under Article 6 para. 1 (Art. 6-1) of the Convention, a denial of his right to respect for private life and correspondence guaranteed by Article 8 (Art. 8) of the Convention and he complains, under Article 13 (Art. 13) of the Convention, that he has no effective remedy in these respects.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of this complaint to the respondent Government.

2. Secondly, the applicant makes a number of complaints about the position adopted by, the composition and powers of and the results of his reviews before the Sentence Review Group. He invokes Articles 5

para. 4 and 14 (Art. 5-4, 14) of the Convention.

However, the Commission recalls its decision of 31 August 1994 as to the inadmissibility of the applicant's first application to the Commission (No. 23156/94). In that application the applicant complained that he had not been released though he had served over 11 years in prison, about the powers and composition of the Sentence Review Group, about the reviews conducted (in May 1990 and May 1992) and the results of those reviews. He also complained that he was discriminated against by that body on grounds of his nationality.

As regards the complaints in relation to the Sentence Review Group, the reviews before that body and the results of those reviews, the Commission concluded that, in light of the applicant's mandatory life sentence, the initial imposition by the court of the life sentence on the applicant incorporated and satisfied the requirements of Article 5 para. 4 (Art. 5-4) of the Convention. His complaint in relation to discrimination by the Sentence Review Group was considered unsubstantiated. Accordingly, those complaints were declared manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The Commission considers that the present complaints under Article 5 para. 4 (Art. 5-4) of the Convention are substantially the same as those raised in the applicant's previous application. The fact that he additionally complains about the procedure conducted in respect of his recent review in November 1995, that Sentence Review Group and the result of that review does not alter the above conclusion as to the similarity of his present complaints under Article 5 para. 4 (Art. 5-4) of the Convention.

Furthermore the Commission considers that the applicant has not, as in his last application, substantiated his complaint as to discrimination by the Sentence Review Group as regards his reviews in 1990 and 1992. Nor has the applicant demonstrated any such difference in treatment as regards his review in November 1995 which took place after his first application. The Commission notes the reasons given by the Sentence Review Group for refusing to make a recommendation to the Minister for Justice in November 1995. While the Commission notes that the applicant submits that he did take appropriate counselling with the therapeutic services and that he cites the names of the persons with whom he has taken such therapy, the Commission also notes the first reason indicated by the Sentence Review Group for refusing his release namely, the seriousness of his offence.

Accordingly, these complaints of the applicant are inadmissible pursuant to Article 27 paras. 1(b) and 2 (Art. 27-1-b, 27-2) of the Convention.

3. Thirdly, the applicant also complains about the prison visit regime and about the prison authorities' allegedly discriminatory treatment of him in this respect. The applicant invokes Articles 8, 13 and 14 (Art. 8, 13, 14) of the Convention, the relevant parts of which Articles read as follows:

Article 8 (Art. 8):

> "1. Everyone has the right to respect for his private and family life, ...
>
> 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 ... for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others."

Article 13 (Art. 13):

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ..."

Article 14 (Art. 14):

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... national or social origin, ... or other status."

As regards the applicant's complaint about the prison visit regime, the Commission recalls that Article 8 (Art. 8) of the Convention requires the State to assist prisoners as far as possible to create and sustain ties with people outside the prison in order to facilitate prisoners' social rehabilitation (see, for example, No. 18632/91 Dec. 9.12.92, unpublished). Accordingly, the applicant's complaints fall within the scope of Article 8 para. 1 (Art. 8-1) of the Convention and, in the circumstances of this case, within the scope of the right to respect for private life.

Since the applicant argues that the State should take steps in relation to the prison visit regime, he is in effect arguing that the State's positive obligations, inherent in the notion of respect for private life in Article 8 (Art. 8) of the Convention, require the provision of a different visit regime. In this regard, the notion of respect is not clear cut and its requirements will vary considerably from case to case. In determining whether such an obligation exists, regard must be had to the fair balance that has to be struck between the general interests and the interests of the individual (Eur. Court HR, B v. France judgment of 25 March 1992, Series A no. 232-C, p. 47, para. 44).

The applicant submits that he cannot accumulate visit entitlements which have not been used and that, since his family and friends must travel a long distance, many of his visit entitlements are not used and, consequently, lost. However, the Commission notes that the applicant is entitled to a weekly visit for half an hour, that the only travel distance specified by the applicant is between Northern Ireland and Dublin and that the applicant can apply to the Governor for (and has received) extended visits. In such circumstances, the Commission considers that the applicant has not established a failure on the part of the State to fulfil its positive obligations under Article 8 (Art. 8) of the Convention as regards the prison visit regime.

As regards the applicant's complaint that he is treated differently from others in respect of prison visits, the Commission recalls that Article 14 (Art. 14) of the Convention protects individuals in analogous situations from a discriminatory difference in treatment in the exercise of the rights and freedoms recognised by the Convention and its Protocols. The Commission will accordingly consider this complaint under Article 8 in conjunction with Article 14 (Art. 14) of the Convention.

The Commission recalls that, as far as the specific visits to which the applicant refers are concerned, the applicant submits that one extended visit was cut short (on 9 January 1993) and that he was not allowed an extended visit (6 July 1994) though it had been approved by the prison Governor. However and on the other hand, it is noted from a letter dated 4 March 1993 from the Foreign and Commonwealth Office that the visit on 9 January 1993 appeared to have been shortened due to the volume of visitors on the day in question rather than a lack of cooperation by the prison authorities. In addition, that letter referred to the applicant as having received a further extended visit soon thereafter (25 January 1993) of almost an hour and a half. In such circumstances, the Commission does not consider that the applicant has demonstrated a discriminatory difference in treatment as regards his

prison visits.

As regards the applicant's complaint under Article 13 (Art. 13) of the Convention, the Commission recalls that that Article only applies if the applicant can be said to have an "arguable claim" of a violation of the Convention (Eur. Court HR, Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). In view of its finding above in relation to prison visits, the Commission finds that the applicant cannot be said to have an "arguable claim" of a violation of his Convention rights as regards such visits.

Accordingly, the Commission considers that the applicant's complaints, in relation to prison visits, are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaints in relation to interference with his correspondence; and

DECLARES INADMISSIBLE the remainder of the application.

H.C. KRÜGER	S. TRECHSEL
Secretary	President
to the Commission	of the Commission