AS TO THE ADMISSIBILITY OF

Application No. 23958/94
by Natalino VELLA
against the United Kingdom

The European Commission of Human Rights sitting in private on 28 November 1994, the following members being present:

Present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS

Mr. M. de SALVIA, Deputy 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 11 April 1994 by Natalino VELLA against the United Kingdom and registered on 25 April 1994 under file No. 23958/94;

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 an Irish citizen, born in 1953 and currently serving a prison sentence in Frankland Prison, Durham in England. The applicant is represented by Ms. Maire Higgins of the Irish Prisoners' Support Group in London. The applicant has had a previous application before the Commission, no. 20482/92, declared inadmissible on 1 September 1993.

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

a. Particular circumstances of the case

The applicant is married and has two children.

The applicant was arrested on 18 June 1984 in England and sentenced to 15 years' imprisonment on charges of possession of explosives and firearms. He was classified as a Category A prisoner.

The applicant, at the time of his arrest, had been married for 10 years and had no family connections in England. He was born in Dublin and comes from a tightly knit community in Dublin.

According to the applicant's previous application, he made repeated transfer petitions to the Home Office requesting to serve his prison sentence in Northern Ireland in order to be nearer to his family. The petitions were refused. According to the Minister's answer of 21 January 1991, "the Secretary of State has fully considered ... the petition but is not prepared to grant (the applicant's) request for a transfer to Northern Ireland because (the applicant) was domiciled in the Republic of Ireland prior to ... conviction".

The applicant's wife is in part-time employment and earns approximately £60 (Irish) per week. She received no State assistance for prison visits to England to see the applicant and had been obliged to incur debts in order to pay for visits which cost approximately £4-500. Her health deteriorated which rendered visiting increasingly more difficult and she grew unable to visit as often as she had done in the early years of the applicant's sentence. Moreover trips to see the applicant were dominated by fear and anxiety due to possible acts by the security forces acting under the Prevention of Terrorism Act. She had experience of being detained.

The applicant continued to maintain family links also by way of correspondence and telephone calls. However correspondence poses particular problems since the applicant's wife, having special learning difficulties, is unable to read or write.

On or about September 1992, the applicant was down-graded from Category A to Category B. He was subsequently down-graded further to Category C and from 1 to 8 March 1994 he was allowed home leave to Ireland. The applicant was released on or about 17 June 1994.

b. Relevant domestic law and practice

Following an interdepartmental review, a report was issued on 23 November 1992 concerning the issue of transfers of prisoners to Northern Ireland prisons. Its recommendations, which were accepted and submitted to Parliament, stated that a system of extended temporary transfers would be instituted.

Since late 1993, a number of prisoners who previously lived in Northern Ireland, including those of Category A classification, have been transferred on a temporary basis from prison in mainland United Kingdom to prison in Northern Ireland.

COMPLAINTS

1. The applicant complains of the refusal to transfer him to a prison in Northern Ireland. All his family reside in Ireland and the cost of travelling to mainland United Kingdom was prohibitive. The applicant's wife, for example, had to travel over 1000 miles, find accommodation and transport to the prison which, if remote and inaccessible, required the use of taxis. Single visits were impracticable and so visitors tended to stay over several days taking "accumulated" visits which are stressful to prisoner and visitor. Visitors were also discouraged by the experiences suffered by many relatives of prisoners when arriving in the United Kingdom where they

may be stopped, strip-searched and detained.

The applicant submits that there was no reasonable justification for the refusal of transfer: there was plenty of accommodation in Northern Irish prisons; he was not classified as a security risk and if he was transferred he would not have benefitted significantly, if at all, from the different rules of remission.

The applicant invokes Article 8 of the Convention in respect of the above.

2. The applicant also complains of discriminatory treatment on the ground of his status as an Irish Republican prisoner. He submits that there have often been transfers of Category A prisoners who are not Republicans and the use of Category A is constant in the case of Republicans. The constant amendment of the applicable transfer criteria discloses a policy of blanket refusal of transfers for Republicans.

THE LAW

1. The applicant complains of the refusal to transfer him from mainland United Kingdom to a prison in Northern Ireland to facilitate visits from his family which reside in Ireland. He invokes Article 8 (Art. 8) of the Convention which 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 recalls that it considered a previous complaint by the applicant in No. 20482/92 which related to the refusal of transfer. Pursuant to Article 27 para. 1 (b) (Art. 27-1-b) of the Convention, the Commission must reject any petition which is substantially the same as a matter which has already been examined unless it contains relevant new information.

The Commission notes that the applicant has identified an error of fact in the Commission's decision in his previous application. The decision states that the applicant was detained as a Category A prisoner whereas it appears from the material before the Commission that from about September 1992 he had been classified as Category B and that he was further downgraded to Category C in 1994. Since the Commission's decision contains in its reasoning a reference to the applicant's classification as indicating security considerations applied in his case, the Commission accepts that relevant new information within the meaning of Article 27 para. 1 (b) (Art. 27-1-b) has arisen. The Commission may therefore proceed to an examination of the applicant's complaints.

The applicant submits, inter alia, that there was no justification for refusing to transfer him to Northern Ireland. He submits that there was adequate room to accommodate prisoners on transfer, that he would not have benefitted from any substantial gain in remission and that he posed no security risk whatsoever. He contends that the previous policy of refusing to transfer Republican prisoners was punitive in purpose. The recent policy introduced of transferring prisoners on a temporary basis demonstrates, it is submitted, the lack of any real security considerations.

The Commission's case-law indicates however that a prisoner has

no right as such under the Convention to choose the place of his confinement and the separation of a detained person from his family and the hardship resulting from it are the inevitable consequences of detention (see eg. No. 5712/72, Dec. 18.7.74, Collection 46 p. 112). Only in exceptional circumstances will the detention of a prisoner a long way from his home or family infringe the requirements of Article 8 (Art. 8) of the Convention (see eg. 7819/77, Dec. 6.5.78, published in part, D.R. 14 p. 186).

The Commission finds that no sufficiently exceptional circumstances arise in this case. It notes that the transfer would have rendered it easier and more convenient for the applicant's visitors who travel from Ireland. This consideration is however insufficient to impose what in effect would have been a positive obligation on the respondent Government to effect a transfer from mainland United Kingdom to Northern Ireland. It has had regard in this context to the wide margin of appreciation which must be accorded to the domestic authority, where, as in this case, sensitive issues arise related to the special situation obtaining in Northern Ireland.

It follows that the applicant's complaints disclose no lack of respect for his right to family life under Article 8 (Art. 8) of the Convention and must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains of discriminatory treatment as a Republican prisoner.

Article 14 (Art. 14) of the Convention provides:

> "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."

The Commission recalls that it dismissed a previous complaint under this provision in the applicant's earlier application (No. 20482/92). However, since the reasoning in the decision referred incorrectly to the applicant's security classification in finding that he could not be considered in an analogous position to other prisoners, it considers that a relevant new fact has been raised and that the complaint to this extent cannot be rejected under Article 27 para. 1 (b) (Art. 27-1-b) as substantially the same.

The applicant complains that as a Republican prisoner he was punished as regards the policy of transfers. It is alleged that, save for rare and special cases, there was a blanket refusal on transfers of Republican prisoners whereas non-Republican prisoners would generally be granted transfers to and from Northern Ireland.

The Commission notes that the applicant was consistently refused a transfer despite the apparent lack of any real security risk posed by him whereas it appears that non-Republican prisoners, even of security risk, have been transferred to Northern Ireland. The Commission recalls however that the applicant was refused transfer on the grounds that he had no links with Northern Ireland. It is not apparent that this factor was present in the other cases to which the applicant refers. Further even though the applicant alleges that there was a blanket refusal policy, it appears that he concedes that transfers of a small number of Republican prisoners were made in previous years and that recently a significant number of Republican prisoners have been transferred on a temporary basis.

In light of the above, the Commission is not satisfied that the applicant has substantiated his complaint that he has been refused transfer on the ground of his status as a Republican prisoner in

circumstances where any other prisoner would have been transferred.

However, even assuming that the applicant has been subject to a difference of treatment on the basis of his status as a Republican prisoner, the Commission recalls that whether a difference in treatment constitutes discrimination in the sense of Article 14 (Art. 14) of the Convention depends on whether or not there exists an objective and reasonable justification. This requires that the difference pursues a legitimate aim and that there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In this assessment of whether and to what extent differences in otherwise similar situations justify a different treatment, Contracting States enjoy a margin of appreciation which will vary according to the circumstances, subject-matter and background (see eg. Eur. Court H.R., Lithgow and Others judgment of 8 July 1986, Series A no. 102, pp. 66-67, para. 177).

Having regard to the above, the Commission recalls that the applicant, a Republican prisoner, was convicted of offences in relation to possession of explosives and firearms. The disposition of such prisoners within the prison administration system raises special and sensitive considerations, given the history of conflict in Northern Ireland in respect of which the political situation is subject to continuing and complex pressures. To the extent therefore that there has been any difference of treatment, the Commission finds that it falls within the wide margin of appreciation enjoyed by the domestic authorities.

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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President to the Commission

(M. de SALVIA) — (C.A. NØRGAARD)