AS TO THE ADMISSIBILITY OF

Application No. 19526/92
by Nicholas WARD
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 8 January 1993, the following members being present:

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

Mrs. M.F. BUQUICCHIO, 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 18 November 1991 by Nicholas Ward against the United Kingdom and registered on 18 February 1992 under file No. 19526/92;

Having regard to

- the report provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 13 August 1992 and the observations in reply submitted by the applicant on 11 November 1992;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of the United Kingdom, born in 1963 and detained in H.M. Prison Albany, Newport, Isle of Wight.

The facts of the present case appear to be as follows.

The applicant received a discretionary life sentence on 18 January 1985 for manslaughter on the grounds of diminished responsibility. He did not appeal against conviction or sentence.

His "tariff" expired in or about 1988, since when, according to a letter of 27 October 1991 from the Home Office, the applicant's continued detention has depended solely on the risk that he presents.

The applicant's case was reviewed by the Local Review Committee (LRC) in September 1988. When the case came before the Parole Board in January 1989, the Board did not recommend release.

The applicant went before the LRC again in January 1991. He states that all the reports on him were excessive. By letter dated 30 July 1991, the Home Office informed him that the Parole Board had not recommended his release. His case is to be referred to the LRC again in July 1994.

## COMPLAINTS

The applicant complains in effect that he has no possibility of having the continued lawfulness of his detention reviewed, as required by Article 5 para. 4 of the Convention. He also complains that the Parole Board refuses to recommend his release on the ground of false allegations.

The applicant further complains under Article 5 para. 5 that he has no enforceable right to compensation in respect of the above breach.

## PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 November 1991 and registered on 18 February 1992.

On 1 July 1992, the Commission decided to communicate the application to the respondent Government and to ask for written observations on the admissibility and merits of the application.

On 13 August 1992 the Government stated that they did not wish to submit observations on the admissibility of the case. The applicant's observations were submitted on 11 November 1992 after one extension in the time-limit.

On 21 October 1992, the Commission decided to grant legal aid to the applicant.

## THE LAW

The applicant, who is serving a discretionary life sentence, complains of the absence of any procedure under domestic law by which he can have reviewed by a court the continued lawfulness of his detention. He also complains that there is no enforceable right to compensation in respect of that shortcoming. He invokes Article 5 paras. 4 and 5 (Art. 5-4, 5-5) of the Convention, which provide :

> "4. 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.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Government have made no objection to admissibility.

The Commission recalls that in the Thynne, Wilson and Gunnell case (Eur. Court H.R., judgment of 25 October 1990, Series A no. 190-A) the Court held that the applicants who were serving discretionary life

sentences were entitled under Article 5 para. 4 (Art. 5-4) to take proceedings to have the lawfulness of their continued detention decided by a court at reasonable intervals and to have the lawfulness of any re-detention determined by a court. The Court found that neither judicial review nor the review by the Parole Board satisfied these requirements. The Court also found that domestic law provided no enforceable right to compensation in respect of that breach.

Consequently, the Commission considers that the present application raises complex issues of law and fact under the Convention, the determination of which should depend on the merits. The application must therefore be declared admissible, no other ground for declaring it inadmissible having been established.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION ADMISSIBLE,
without prejudging the merits of the case.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (J.A. FROWEIN)