AS TO THE ADMISSIBILITY OF

Application No. 27279/95
by Ewan Quayle LAUNDER
against the United Kingdom

The European Commission of Human Rights sitting in private on 8 December 1997, 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
C.L. ROZAKIS
L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
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 AMIGÓ
Mrs M. HION
MM R. NICOLINI
A. ARABADJIEV

Mr M. de SALVIA, 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 5 April 1995 by Ewan Quayle Launder against the United Kingdom and registered on 10 May 1995 under file No. 27279/95;

Having regard to:

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

- the observations submitted by the respondent Government on 5 August 1997 and the observations in reply submitted by the applicant on 20 October 1997 and the additional material submitted by the parties in November and December 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British national, born in 1935. Before the Commission he is represented by Titmuss Sainer Dechert, solicitors practising in London.

The applicant is married and has three children, aged 34, 32 and 28, and five grandchildren. The applicant and his family currently reside in the United Kingdom.

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

A. Particular circumstances of the case

The charges against the applicant and the events leading to his arrest

The applicant and, apparently, his family, lived in Hong Kong between 1973 and 1983.

The applicant has been charged in Hong Kong on fourteen counts of accepting bribes. The charges are that between October 1980 and June 1982 as managing director of the merchant bank Wardley Limited in Hong Kong he received bribes in an amount totalling approximately £ 4.5 million from T. and C., the persons who controlled the Carrian and the Eda Group of companies.

The Carrian and Eda Groups collapsed in 1982 and 1983. In March 1983 inspectors were appointed to investigate their affairs. T. was arrested in October 1983. In 1983 the applicant was interviewed in Hong Kong by inspectors who handled the inquiry. He was again contacted by the Hong Kong authorities in 1985, by mail, through the address of his newly incorporated company in the United Kingdom. The applicant, who at that time was in the United States, replied and provided his address there. At that time he was not suspected of wrongdoing. In December 1986 a report into the investigation of the Eda Group was published in Hong Kong.

In July 1987 the United Kingdom authorities received a letter from a person claiming to be an employee of Wardley alleging corruption by the applicant. In September 1987 the letter was passed to the Hong Kong authorities. In October 1987 they began inquiries into alleged corruption by the applicant. In 1988 the inquiries disclosed that payments had been made by T. and C. to an account of a company incorporated in Panama and controlled by the applicant. An amount was traced to a personal account of the applicant. In 1989 the Attorney General of Hong Kong gave consent to prosecute the applicant and a warrant for his arrest was issued.

Throughout 1988 the applicant lived in London and worked for his company incorporated there. In February 1988 he met in London the liquidators of the Carrian Group to assist them in their work. The liquidators apparently had no difficulties locating the applicant.

It appears undisputed that by mid-August 1989 the applicant knew of the inquiry relating to him.

In the summer of 1989 the applicant moved to Gibraltar where he incorporated another company. Thereafter and throughout 1990 he lived with his wife in Malaga, Spain, where he had purchased a house. His company's address was listed in the telephone directory of Gibraltar.

On 21 May 1990, upon the request of the Hong Kong authorities,

a provisional warrant for the applicant's arrest was issued at Bow Street Magistrates Court in London. In September 1990 an international arrest warrant was issued by Interpol.

After October 1990 and until his arrest the applicant worked in Berlin where he incorporated another company. In March 1991 he applied for and was issued with a new passport at the British Embassy in Berlin. On the application form for a passport the applicant indicated his addresses in the United Kingdom and in Berlin.

In April 1991 the applicant's wife was contacted at her home in the United Kingdom and was informed that the police wanted to speak to her husband. The applicant submits that he did not know of the formal charges against him before June 1991, when he was informed thereof by his Hong Kong solicitors.

It appears that the applicant did not visit the United Kingdom between December 1989 and July 1992, when he came on a short visit. Subsequently he made visits in September, October and December 1992 and in August 1993.

In April 1993 two representatives of the Hong Kong authorities were at Berlin airport and saw the applicant. According to them they attempted to follow and then lost the applicant who allegedly used "professional anti-surveillance techniques". The applicant denies this.

On 10 September 1993, when arriving in London on a flight from Germany, the applicant was arrested. On 30 September 1993 he was released on bail.

Legal proceedings in the United Kingdom

On 12 January 1994 the Secretary of State issued a specialty certificate under Section 6 paras. 4 and 7 of the Extradition Act 1989. This certificate provided that the Governor of Hong Kong had undertaken that in the event of the applicant's return to Hong Kong he would not be tried in respect of other crimes unrelated to those for which he would be returned.

On 7 April 1994 a Magistrates Court committed the applicant to await the decision of the Secretary of State concerning his return to Hong Kong, under Section 9 of the Extradition Act (1989).

The applicant then sought habeas corpus, which was refused on 14 December 1994 by the Divisional Court. The issue for the Divisional Court was whether by reason of the passage of time since the alleged offences it would, having regard to all the circumstances, be unjust or oppressive to return the applicant to Hong Kong (Section 11(3) of the Extradition Act).

The principles to be applied by the Divisional Court were summarised by Glidewell LJ in the following manner:

> "(i) The relevant passage of time runs from the date of alleged offences to the date of this hearing. See Kakis v Government of Cyprus [1978] 1 WLR 779, a decision of the House of Lords, particularly the speech of Lord Diplock at page 782.
>
> (ii) "Unjust" means unjust to the accused in the conduct of the trial. In other words, the question on that issue is, would it be possible for the accused to have a fair trial despite the lapse of time? "Oppressive" relates to hardship to the accused resulting from changes in his circumstances which have occurred during the relevant period. See again Kakis, the speech of Lord Diplock, pages

782-3.

(iii) Thirdly, the task of this Court sitting as a court of first instance, is to consider the facts placed before it and form an opinion as to the inferences to be drawn from the facts it finds as primary facts. See R v Governor of Pentonville Prison, ex parte Narang [1978] AC 247, per Viscount Dilhorne at 272H. The decision is one of fact and not law, and does not involve an exercise of discretion.

'Moreover, it is to be noted that if it appears to the Court that it would, because of the passage of time, be unjust or oppressive to return him, this Court shall order the applicant's discharge.'

(iv) The Applicant cannot rely on delay for which he personally was responsible. See Kakis at page 783. ..."

The fifth principle applied, in the applicant's favour despite some doubt on the status of the authorities, was that:

"... to the extent that the Hong Kong Government is proved to have been responsible for delay, that is a matter properly to be taken into account in deciding the issues of injustice and oppression."

Turning to the facts of the case before it, the Divisional Court noted that the time which had elapsed since the offences were alleged to have been committed was lengthy and examined the reasons for that length. The Divisional Court divided the length of time, for this purpose, into four periods: from the commission of the alleged offences until September 1987; from September 1987 to November 1989; from November 1989 to the arrest in September 1993; and from September 1993 to the date of its judgment.

As regards the first period the Divisional Court found that until the receipt of a letter from an informer nobody suspected Mr Launder of corruption and that, therefore, the Hong Kong authorities should be absolved from any responsibility for that delay, which resulted "in part" from Mr Launder's own activities. The Court noted that there existed evidence that steps had been taken to conceal the fact that the trail led to Mr Launder. In particular, some large payments were made in cash, and where cheques were used, they were not made out to him. Also, all the money had left Hong Kong by the end of 1983.

As regards the second period the Divisional Court found that no criticism of the Hong Kong authorities could be made in respect of the first year of this two year period. The Court concluded that "if the Hong Kong Government have any responsibility, it is for not more than about one year of delay in that period".

As regards the third period the applicant's submissions to the Divisional Court had been, in essence, that he had lived and travelled openly in that period and there should accordingly have been no difficulty in tracing and arresting him. The Divisional Court noted inter alia:

(i) that it was of no avail to the authorities to know where the applicant had last been. They needed to know where he would be at a particular date and the applicant appeared to have taken steps to ensure that, at the least, that was difficult;

(ii) that the applicant "was unwilling to be interviewed and ... took the view as he makes clear that it was not for him to surrender himself, it was for the authorities to arrest him if they could";

(iii) that the difficulties were compounded by the fact that, as the

applicant knew, certain countries (such as Germany) would not issue an extradition warrant after a fixed period of time.

Curtis J, who agreed with the findings of fact and the conclusions of Glidewell LJ, further noted:

> "... I would find that the only proper inference from the applicant's conduct at Berlin Airport in April 1993 and at Heathrow Airport in September 1993 when he was arrested, is that he was intentionally covering his tracks as well as avoiding arrest. It was only a timely tip-off which enabled the authorities to effect his arrest at Heathrow. In my view this conclusion throws abundant light on the question of who is responsible for the delay in period number 3, that is to say, between November 1989 and September 1993."

In all the circumstances, and having considered all the evidence, the Divisional Court concluded as follows:

> "... during this period up to his arrest, Mr Launder himself was responsible for the delay. In so far as he could do so consistently with conducting the affairs of the various Quail companies, and no doubt continuing to live what he regarded as a reasonably civilised life, he took steps to avoid coming to the attention of the authorities, and thus to avoid arrest."

Finally, the Divisional Court noted that since September 1993 the time had been taken up with "various legal procedures for which neither party is responsible".

The Divisional Court then considered whether injustice or oppression to the applicant would result from his return to face trial in Hong Kong. The Court found that there was no prejudice from any lack of documents. As to any prejudice which might be suffered from the lack of witnesses, the Court observed that, given the absence of even a general summary of the nature of the defence which would be advanced on the applicant's behalf, it was "extremely difficult to conclude in his favour that he will be unable to receive a fair trial". The Court further took into account the general anxiety of the proceedings hanging over the applicant for a long period of time; but noted that "the responsibility for it is that of [the applicant] himself".

Leave to appeal to the House of Lords against the Divisional Court's judgment of 14 December 1994 was refused on 9 March 1995.

On 5 April 1995 the applicant made detailed submissions to the Secretary of State, inter alia, as regards the alleged risks which he would face after 1 July 1997, when Hong Kong would become a "special administrative region" ("the HKSAR") within the People's Republic of China ("P.R.C.").

On 31 July 1995 the Secretary of State ordered his return to Hong Kong. His decision was reasoned. He found, inter alia, that under the Joint Declaration of 1984 Hong Kong's legal system would continue to operate independently from the P.R.C. for 50 years after 1 July 1997; that specialty protection would be preserved; and that under Hong Kong law the charges against the applicant did not carry the death penalty.

On 21 December 1995 the Secretary of State refused the applicant's request to reconsider this decision (the applicant had claimed that new developments had occurred by November 1995).

The applicant applied for judicial review of the decisions of the Secretary of State of 31 July and 21 December 1995. On 6 August 1996

the Divisional Court quashed the decision of the Secretary of State to order the applicant's return and remitted the matter back to the Secretary of State to take a fresh decision.

The Court found inter alia that the Secretary of State had erred in the exercise of his discretion under Section 12 of the Extradition Act (1989) in that he considered himself bound by a collective Cabinet decision that the P.R.C. would comply with its treaty obligations as regards the legal system of Hong Kong after 1 July 1997.

The Secretary of State appealed to the House of Lords. On 21 May 1997 the House of Lords allowed the appeal and dismissed the applicant's application for judicial review.

The substance of the House of Lords' judgment (3 All ER 961 [1997]) may be summarised as follows:

(i) The applicant challenged the decision of the Secretary of State to extradite him to Hong Kong on the grounds, inter alia, that the decision was irrational and that the extradition would be in violation of the Convention since, if returned to Hong Kong, his rights to life and liberty, to a fair trial and not to be subjected to inhuman and degrading treatment would be put at risk.

(ii) In deciding to extradite the applicant, the Secretary of State had applied the right test as a matter of domestic law, namely whether the applicant would be exposed to the risk of injustice or oppression if he were to be returned to Hong Kong to face trial there after 1 July 1997.

(iii) It was clear that in applying this test great weight had been given by the Secretary of State to the provisions of the Joint Declaration and the Basic Law (see below Relevant law and practice) which the House of Lords described as "impressive in their attention to detail and in their recognition of fundamental principles". It was indicated in evidence that the Secretary of State "had proceeded on the basis that the P.R.C. will honour the obligations and commitments under the established instruments [the Joint Declaration and the Basic Law]."

(iv) No attempt had been made to answer in any other way the many detailed representations on the applicant's behalf that, despite what was said in these instruments, the legal, penal and judicial system in Hong Kong after 1 July 1997 would not protect the right to a fair trial and, in case of conviction, to appropriate punishment. The material filed by the applicant contained "numerous examples of acts done and permitted to be done by the P.R.C. and its officials to illustrate the argument that in the P.R.C. the law is seen as the instrument of the Party and of the Executive, and that any legal procedure, however fair and however comprehensive, cannot be expected to guarantee an independent system of justice after the handover".

(v) The question whether it was unjust or oppressive to order the applicant's return to Hong Kong might in the end depend upon whether the P.R.C. could be believed to implement its treaty obligations to respect his fundamental human rights, allow him a fair trial and leave it to the courts, if he were convicted, to determine the appropriate punishment. The decision on this question rested with the Secretary of State and not with the United Kingdom courts, whose function was one of review only:

"The visible part is the framework of law which I have discussed. That part can be explained and analysed. The invisible part is about the hearts and minds of those who will be responsible for the administration of justice in Hong Kong after the handover. This is not capable of analysis. It depends, in the end, upon the exercise of judgment of a kind which lies beyond the expertise of the court."

(vi) There was room for two different views. On one view, taken by the applicant and supported by a substantial body of evidence from expert witnesses, the P.R.C. had already demonstrated by its conduct in recent years that the P.R.C. was incapable of giving effect to the rule of law on which the Basic Law would depend. There was on this view a risk, especially in a politically sensitive case, that any trial would be unfair and that on conviction the executive would insist on inhuman and excessive punishment. The other view, taken by the Secretary of State, was that the P.R.C. had good reason to make every effort in Hong Kong to preserve the existing criminal justice system, in recognition that it would not be appropriate to practise the socialist system and policies there. The P.R.C. had an obvious interest in making a success of the new arrangements. A breakdown of the rule of law generally, or a departure from it in some cases such as this one, would be bound to have a serious effect on confidence throughout the business community on which it depended for that success.

(vii) The care taken by the Secretary of State during the long period of preparation for the takeover provided a clear basis for holding that the decision of the Secretary of State to reject the applicant's arguments was not irrational.

(viii) The applicant had rightly identified a gap in the specialty arrangements relating to the question whether the applicant would be protected from transfer to the P.R.C. if extradited after 1 July 1997 as Section 17(2) of Hong Kong Ordinance No. 23 of 26 March 1997 (the Fugitive Offenders Ordinance) was silent about the re-surrender of a fugitive to the P.R.C. The House of Lords noted the importance of this issue as it was dealing with "concerns which have been expressed about human rights and the risks to the [applicant's] life and liberty". The House of Lords however further noted the following: the P.R.C. had agreed that Hong Kong might negotiate and conclude, under the authorization of the P.R.C., its own extradition arrangements containing specialty protection; such agreements had been concluded with other States; based on Section 3(1) of Ordinance No. 23 there would be the necessary protection after the handover once such an agreement was concluded with the United Kingdom; there existed a draft of an agreement with the United Kingdom which would provide protection; furthermore, there existed the provisions of the Basic Law relating to human rights and fundamental freedoms and to the judiciary; it was the stated policy of the Hong Kong Government and of the incoming Government of the HKSAR that it did not and would not surrender persons to places outside its jurisdiction either to face trial or to serve sentences unless it was pursuant to a law and subject to safeguards:

"It is reasonable to conclude that, in accordance with the fundamental policy which has been enshrined in the Basic Law, the prohibitions which are needed to ensure that the [applicant] is not surrendered to the P.R.C. will be in place after 1 July 1997. As ... already said, there is room for two views as to whether China can be relied upon to respect this policy. But it cannot be said to be irrational to prefer the view that sufficient commitment to that policy has already been demonstrated by the P.R.C. and that sufficient incentives exist to ensure the continuation of that commitment after the handover."

As a result of the judgment of the House of Lords, the decision of the Secretary of State to return the applicant to Hong Kong became effective. The applicant surrendered to custody on 21 May 1997 and was detained with a view to his return to Hong Kong. In June 1997 he was released on bail.

On 1 July 1997 the P.R.C. resumed sovereignty over Hong Kong.

B. Relevant law and practice

In accordance with the Joint Declaration of 1984 (a binding treaty between the United Kingdom and the People's Republic of China on the status of Hong Kong) on 1 July 1997 Hong Kong became a "special administrative region" ("HKSAR") within the P.R.C.

Under the Joint Declaration and the Hong Kong Basic Law (adopted in 1990 and promulgated by the President of the P.R.C.) Hong Kong preserves its independent legal and judicial system for 50 years after 1997.

Under Section 8 of the Basic Law "the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene [the Basic Law] and subject to any amendment by the legislature of the Hong Kong special administrative region."

The Joint Declaration provides that the legislature should be constituted by elections. Following a dispute between the United Kingdom and the P.R.C. as to whether the Legislative Council, as established after a 1995 electoral reform, should have continued its functions after 1 July 1997, a Provisional Legislature was appointed without elections. Elections for a legislature are announced to be held in May 1998. On 1 July 1997 the Provisional Legislature adopted the Hong Kong Reunification Ordinance. The Ordinance confirmed the maintenance and continuity of previous laws, of the public service and of the judicial system. The Ordinance also introduced some amendments to the Bill of Rights Ordinance establishing the requirement of previous approval by the police for demonstrations.

Under Section 160 of the supplementary provisions to the Basic Law the exception to the principle of continuity also includes those laws which upon their review by the Standing Committee at the Chinese National People's Congress are found to be in contravention of the Basic Law. On 23 February 1997 the Standing Committee adopted its decision under Section 160 of the Basic Law. Certain laws dealing mainly with issues of foreign affairs and nationality were declared contrary to the Basic Law. No provision relating to the criminal justice system or to human rights has been declared contrary to the Basic Law.

Article 19 of the Basic Law, insofar as relevant, provides as follows:

"The [HKSAR] shall be vested with independent judicial power, including that of final adjudication.

The courts of the [HKSAR] shall have jurisdiction over all cases in the Region ...

The courts of the [HKSAR] shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government."

Under the Joint Declaration and the Basic Law the judicial system previously practised in Hong Kong is maintained, except for those changes consequent upon the establishment of a Court of Final Appeal. Members of the judiciary enjoy immunity from legal action in the performance of their judicial functions. The Court of Final Appeal

comprises permanent and non-permanent judges to be drawn from a panel of experienced judges. Four permanent and fifteen non-permanent judges have already been appointed. A majority of them, including Chief Justice Litton, are persons who received part of their education and practised for certain periods of time in the United Kingdom. Four of the non-permanent judges are from overseas (two from Australia and two from New Zealand).

The Joint Declaration and the Basic Law also contain provisions guaranteeing human rights, such as the right to a fair trial (Article 87 of the Basic Law), the presumption of innocence (ibid.), and the prohibition of arbitrary or unlawful arrest, detention or imprisonment (Article 28).

The Joint Declaration and the Basic Law provide for the applicability of the International Covenant on Civil and Political Rights in Hong Kong. According to the Chairman of the UN Human Rights Committee, in a statement issued on 9 November 1995, the applicability of the Covenant could be derived both from the Committee's jurisprudence in cases of dismemberment of a State party and from the explicit text of the Joint Declaration which is binding upon the P.R.C..

It appears that while accepting the applicability of the Covenant for Hong Kong (the P.R.C. itself is not a party thereto) the Chinese Government have released statements to the effect that they would not be bound by the reporting obligation under Article 40 of the Covenant.

On 5 November 1997 there was signed a Surrender of Fugitive Offenders Agreement between the Government of the United Kingdom and the Government of the HKSAR. The Government of the HKSAR had been duly authorised to conclude the agreement by the Government of the P.R.C. Article 18 of the agreement provides as follows:

"(1) Where a fugitive offender has been surrendered to the requesting Party, that Party shall not surrender him to any other jurisdiction for an offence committed before his surrender unless:

(a) the requested Party consents; or

(b) he has first had an opportunity to leave the jurisdiction of the requesting Party and has not done so within forty days of having been free to do so or has returned voluntarily to that jurisdiction having left it.

(2) The party whose consent is requested may require the production of the documents submitted by the other jurisdiction in support of its request for surrender."

Article 20 of the agreement stipulates that it enters into force thirty days following the exchange of notifications confirming the completion of the procedures necessary to enable the agreement to enter into force.

COMPLAINTS

1. The applicant submits that the United Kingdom would violate his rights under the Convention if he is extradited. He invokes Articles 1, 2, 3, 5, 6, 7, 8, 13 and 14 of the Convention.

The applicant makes the following general submissions concerning the situation in the HKSAR:

He submits that given the political system in the P.R.C. and its abominable human rights record, there is a strong likelihood that the

P.R.C. will ignore previous undertakings, such as the guarantees for the independence of the judicial system and for human rights in the HKSAR.

The applicant also makes detailed submissions on the principles and concepts of Chinese law arguing that, as a result of the fundamental differences between these and the European concepts of law and its interpretation, the Basic Law, the Joint Declaration and all legal provisions which remained in force after 1 July 1997 could be interpreted in a manner which would result in denial of basic human rights. The applicant submits experts' opinions and articles from the press concerning the expected changes in the HKSAR after 1997.

The applicant submits that the courts of the HKSAR would not have jurisdiction over matters relating to "acts of State" and that this as interpreted in the P.R.C. may include "implementation of the policies of the Government of the day". As a result, given the special policy concern which corruption constitutes in the P.R.C., the applicant can allegedly be dealt with under the "act of State" provision and his trial used as an example of capitalist corruption.

The applicant submits also that there is no guarantee that he would not be transferred to other parts of the P.R.C. This is so because there is a gap in the existing legal arrangements as regards persons extradited to the HKSAR in that there is no clear prohibition against surrendering such persons to other parts of the P.R.C. This gap was acknowledged by the House of Lords in the applicant's case.

He also considers that there is a grave risk that the undertakings under the specialty certificate issued in 1994 by Hong Kong's Governor would not be honoured after 1 July 1997.

Based on these submissions the applicant makes the following specific complaints:

(a) Under Article 2 of the Convention the applicant submits that there is no guarantee that the death penalty for offences such as those for which he is charged would not be restored in the HKSAR. Also, he risks an arbitrarily imposed death penalty if transferred to other parts of the P.R.C. The applicant refers, inter alia, to the case of a Mr Wang Jianye who was extradited from Thailand to the P.R.C. on corruption charges after the receipt of assurances from the Chinese authorities that he would be punished by not more than 15 years imprisonment. However, it is submitted that Mr Jianye was executed in a football stadium after having been paraded through town on an open top truck, the execution having been broadcast on television.

(b) Under Article 3 of the Convention the applicant contends that he faces a real risk of a punishment disproportionate to the severity of the alleged crime and that in the P.R.C. there exist no guarantees against ill-treatment. The applicant refers to the fact that no Member State of the Council of Europe has any form of legal co-operation agreement with the P.R.C.

(c) Under Article 5 of the Convention the applicant submits that his extradition would be in breach of his right to security of person as he would face a threat of unjustified and arbitrary detention. In the applicant's view, Article 5 of the Convention obliges States' courts to examine whether a possible detention as a result of an extradition would not be arbitrary. The United Kingdom courts were not competent to and allegedly did not examine this issue.

(d) Under Article 6 of the Convention the applicant complains that there would be a flagrant denial of his right to a fair trial in case of his extradition. He contends that there is a strong likelihood that pressure would be exercised on the courts in the HKSAR, and that the case would be regarded as an example in order to pillory the "western"

and "capitalist" administration of the former colony of Hong Kong.

The applicant also submits that his trial after the extradition would not be fair due to the passage of time since the alleged offences. In particular, there would be difficulties in ensuring the attendance of crucial witnesses, some of whom have long since left Hong Kong. Also, a trial and punishment in respect of events dating between 1980 and 1982 would also be a breach of the right to security of person under Article 5 of the Convention and contrary to the principle of legality enshrined in the Convention.

(e) The applicant also submits that in the event of his extradition Article 7 of the Convention would be violated as in the P.R.C. the principle "nullum crimen nulla poena" does not exist.

(f) Under Article 8 of the Convention the applicant submits that an extradition effected 19 years after the alleged offences could not be regarded as lawful, hence the interference with his family life would not be lawful. Also, the measure is allegedly disproportionate. The applicant's family would be thousands of miles away from him.

(g) The applicant also invokes Article 14 of the Convention.

2. The applicant alleges violations of the Convention also in respect of the proceedings in the United Kingdom related to his extradition. Invoking Article 13 in conjunction with Articles 3, 5 and 6 of the Convention the applicant submits that he does not have an effective remedy because the House of Lords limited its review of the Secretary of State's decision to extradite him only to the question of the alleged irrationality. The applicant also invokes Article 14 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 5 April 1995 and registered on 10 May 1995.

On 30 May 1997 the Commission decided to communicate the application to the respondent Government. The Commission also decided, in accordance with Rule 36 of its Rules of Procedure, to indicate to the Government of the United Kingdom that it was desirable in the interests of the Parties and the proper conduct of the proceedings before the Commission not to extradite the applicant to Hong Kong until the end of the Commission's session in September 1997. The effect of this indication was thereafter prolonged.

The Government's written observations were submitted on 5 August 1997, after an extension of the time-limit fixed for that purpose. The applicant replied on 20 October 1997.

The Government submitted further information by letter of 20 November 1997. The applicant replied on 24 and 28 November and on 5 December 1997.

THE LAW

1. The applicant complains that in the event of his extradition to the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China ("P.R.C.") he faces a real risk of loss of life contrary to Article 2 (Art. 2) of the Convention or of ill-treatment in violation of Article 3 (Art. 3) of the Convention.

Article 2 (Art. 2) of the Convention, insofar as relevant, provides as follows:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

..."

Article 3 (Art. 3) of the Convention provides as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

a) The Government maintain that the complaints must be examined in the HKSAR context as the applicant is to be extradited there and not to other parts of the P.R.C. The Government submit that the HKSAR has its independent legal system which is preserved and that therefore the material presented by the applicant about the P.R.C. and its human rights record is of little assistance. The Government maintain that the applicant has failed to show that in the HKSAR he risks the death penalty, inhuman treatment or punishment, or denial of a fair trial.

Referring to the judgment of the House of Lords in the applicant's case the Government deny that there is any risk of his transfer to the P.R.C. The Government submit that in any event any possible lacuna which might have existed at the time of the House of Lords' judgment has been filled by the Agreement between the United Kingdom Government and the Government of the HKSAR of 5 November 1997 the effect of which is, inter alia, to protect the applicant from further surrender to other parts of the P.R.C.

The Government contend that the applicant's submissions that the P.R.C. cannot be trusted to abide by its treaty obligations to preserve the independent system in the HKSAR, if accepted, would mean that no civilised State could properly conclude extradition arrangements with the HKSAR. However, extradition agreements are in place between the HKSAR and respectively the Netherlands, Canada, Australia and other States. Furthermore France, Germany, Italy, Switzerland and Belgium are currently negotiating such agreements. The Government submit that therefore the United Kingdom are not alone in their judgment that the criminal justice system in the HKSAR will continue to ensure fairness of proceedings. Moreover, it also follows that the applicant's case is not unique and therefore exceptional, as he is trying to present it.

The Government further maintain that the decision of the Secretary of State involved inevitably a large element of judgment about the likely future developments in the HKSAR and "about the hearts and minds of those who will be responsible for the administration of Hong Kong". By its very nature that judgment was particularly within the expertise of the executive and difficult for a court. Nevertheless, the decision of the Secretary of State has been subject to careful review and to "the most anxious scrutiny" by the domestic courts, including as regards events which post-dated the decisions in question. Although the judicial review proceedings did not amount to an appeal on the facts, the applicant was able fully to develop before the House of Lords the same submissions which he is now making before the Commission.

The Government submit that the P.R.C. has good reason to ensure that the legal system in the HKSAR continues as it was before 1 July 1997 as the success of Hong Kong would be otherwise undermined. Furthermore, the events since the handover provide, in the Government's view, powerful reinforcement of that indication. In particular, the judicial system has been preserved.

The applicant replies that he has established the existence of a very serious risk of a flagrant denial of his basic human rights.

The applicant contends that he is not protected from transfer between the HKSAR and other parts of the P.R.C. particularly in view of the nature of the charges against him and of his profile. The applicant submits that the House of Lords merely reviewed the decisions of the Secretary of State taken on 31 July 1995 and 21 December 1995 to order the applicant's extradition and found that at that time the Secretary of State had not acted irrationally in concluding that it was probable that specialty protection would be provided. He also states that the Surrender of Fugitive Offenders Agreement signed on 5 November 1997 between the United Kingdom and the HKSAR is not yet in force and that its terms are not sufficiently clear and do not provide the necessary protection against re-surrender to the P.R.C.

The applicant also argues that he faces serious risks of violations of his rights even if he is not transferred to other parts of the P.R.C. The applicant does not dispute that the HKSAR courts as they are operating as of October 1997, when his submissions were made, are capable of determining an ordinary criminal charge. However, he contends that his case is highly sensitive as he, a citizen of the former colonial power, would be tried for corruption and would be treated as an example of the "corrupt colonial past". The applicant also submits that the Government have failed to answer the issues relating to the "act of State" doctrine.

Furthermore, there should be no blind confidence that the system will continue to operate normally. In particular, the Legislative Council elected following the electoral reform of 1995 has been replaced by an appointed provisional legislature. There is strong likelihood that the 1998 elections will also not be democratic. Furthermore, there have been already important amendments in existing Hong Kong laws.

The applicant further refers to a decision of July 1997 of a Court of Appeal in the HKSAR where the court was dealing with a challenge over the status of criminal proceedings commenced before the transfer of sovereignty. The Court found that the previous laws were in force in the HKSAR and that the indictment was validly continued. The Court also, apparently in obiter dicta, confirmed the validity of the provisional legislature and accepted the argument of the solicitor-general that, as previously Hong Kong courts could not question the acts of the British Government, the Court could not now review the acts of the P.R.C. Government for their conformity with the Basic Law. This finding has been criticised in the press by a renowned professor, who has also stated that it is not binding on other courts and is not final. The applicant has not submitted a copy of the judgment.

b) The Commission has first examined the applicant's complaint under Article 2 (Art. 2) of the Convention.

The Commission recalls that Article 2 (Art. 2) contains two separate though interrelated basic elements. The first sentence of paragraph 1 sets forth the general obligation that the right to life shall be protected by law. The second sentence of this paragraph contains a prohibition of intentional deprivation of life, delimited by the exceptions mentioned in the second sentence itself and in paragraph 2 (cf. No. 17004/90, Dec. 19.5.92, D.R. 73 p. 155).

The Commission finds nothing to indicate that the extradition of the applicant would amount to a violation of the general obligation contained in the first sentence of paragraph 1.

As regards intentional deprivation of life the Commission further recalls its case-law according to which it is not excluded that an issue might be raised under Article 2 (Art. 2) in circumstances in which an expelling State knowingly puts the person concerned at such high risk of losing his life as for the outcome to be a near-certainty. However, there must be a "near-certainty" of loss of life to make

expulsion an "intentional deprivation of life" prohibited by Article 2 (Art. 2). Allegations of the existence of a "real risk" only fall to be examined under the prohibition of inhuman treatment as enshrined in Article 3 (Art. 3) (No. 25894/94, Bahaddar v. the Netherlands, Comm. Report 13.9.96, para. 78, pending before the Court).

The Commission considers that a similar approach is justified not only in cases of expulsion, but also of extradition.

In the present case the applicant maintains that if convicted following his extradition he risks the death penalty. The Commission notes, however, that it is undisputed that the death penalty cannot be imposed in the HKSAR for the offences in respect of which the extradition of the applicant was sought and granted. Nor has the applicant established a real likelihood that the death penalty will be introduced for such offences and imposed in the event that he is convicted of the offences with which he is charged. The Commission does not accordingly find that the facts of the case disclose a real risk, let alone a risk attaining the level of near-certainty for the purposes of Article 2 (Art. 2), that the death penalty would be imposed on the applicant in the HKSAR.

As regards the complaint that the applicant may be deprived of his life arbitrarily or tortured to death, or that he may be surrendered to other parts of the P.R.C. where he will face the risk of the death penalty, the Commission finds it convenient to consider this complaint in conjunction with the complaint under Article 3 (Art. 3) of the Convention.

c) Examining the applicant's complaints under Article 3 (Art. 3) of the Convention, the Commission recalls that extradition to another State where there are substantial grounds for believing that the applicant would be in danger of being subjected to torture or to inhuman or degrading treatment or punishment may raise an issue under Article 3 (Art. 3) of the Convention (cf. Eur. Court HR, Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161; No. 22742/93, Dec. 20.1.94, D.R. 76, p. 164).

The examination of the existence of a risk of ill-treatment in breach of Article 3 (Art. 3) must necessarily be a rigorous one in view of the absolute character of this provision and the fact that it enshrines one of the fundamental values of democratic society. In determining whether substantial grounds have been shown for believing the existence of a real risk of ill-treatment the issue must be assessed in the light of the material placed before the Convention organs or, if necessary, material obtained proprio motu (cf., mutatis mutandis, Eur. Court HR, Vilvarajah v. the United Kingdom judgment of 30 October 1991, Series A no. 215, p. 36, paras. 107 and 108).

In the present case it appears undisputed that the law and the legal system in Hong Kong, as they existed before the transfer of sovereignty on 1 July 1997, would have provided sufficient guarantees protecting the applicant from arbitrary death, torture or inhuman treatment or punishment in the event of his extradition. The applicant claims, however, that after 1 July 1997 when Hong Kong became a "special administrative region" within the P.R.C. these guarantees are in the process of being or even have already been dismantled or otherwise rendered insufficient and ineffective.

However, the Commission notes that under a binding international treaty the P.R.C. has undertaken to preserve the independent legal and judicial system of the HKSAR for a period of 50 years and that it has not been shown that after 1 July 1997 the P.R.C. has disregarded its international obligations. In particular, the criminal law and the criminal justice system of Hong Kong have been preserved basically unchanged.

The Commission further considers that the applicant has not established that the modifications in certain laws and institutions and the other political and societal changes in the HKSAR referred to by him can be said to affect his position, in the event of his extradition, in such a manner as to demonstrate that there exists a risk of his being subjected to ill-treatment in violation of Article 3 (Art. 3) of the Convention.

The Commission attaches importance to the provisions of the Joint Declaration and the Basic Law, to the information about the judicial system of the HKSAR, to the fact that the International Covenant on Civil and Political Rights is in force for the HKSAR, as well as to the information about developments after 1 July 1997.

The applicant claims that he risks a transfer to other parts of the P.R.C. where he would not be protected by the safeguards of the HKSAR legal system. It is pointed out that, as acknowledged by the House of Lords, there exists a gap in the specialty arrangements, in that Section 17(2) of Hong Kong Ordinance No. 23, which concerns the extradition of fugitives, is silent about their re-surrender to the P.R.C. This gap was to be filled when an extradition agreement between the United Kingdom and the HKSAR had been concluded, as had already been the case with several other countries. The House of Lords noted that as of May 1997 such an agreement had been drafted but not yet signed.

The Commission observes that the agreement in question was signed between the United Kingdom and the HKSAR on 5 November 1997 and that its Article 18 prohibits, in the case of a fugitive offender who has been surrendered by the United Kingdom to the HKSAR, the re-surrender of the fugitive "to any other jurisdiction for an offence committed before his surrender" unless, inter alia, the United Kingdom consents.

The applicant, however, contends that the agreement of 5 November 1997 does not provide an adequate safeguard against his transfer from the HKSAR to other parts of the P.R.C. He points out, inter alia, that the unspecified procedures referred to in Article 20 of the agreement which are necessary to bring it into force have not yet been completed; that the agreement has not yet been laid before the United Kingdom Parliament or the Legislative Council of the HKSAR and cannot thus be regarded "the law" for the purposes of the Convention; that the agreement does not regulate transfers as such of fugitive offenders between the HKSAR and other parts of P.R.C. but only applies to cases where there has been a formal request by the P.R.C. for re-extradition of the person surrendered to the HKSAR; and that the use of the expressions "area", "jurisdiction" and "region" in the agreement gives cause for doubt as to whether the agreement would in any event prevent the re-transfer of a fugitive offender from the HKSAR to other parts of the P.R.C.

The Commission in the first place observes that the House of Lords did not rely solely on the future signing of an extradition agreement when it found that it was reasonable to conclude that "the prohibitions which are needed to ensure that the [applicant] is not surrendered to the P.R.C. will be in place on and after 1 July 1997". The House of Lords noted the existence of safeguards against the applicant's removal from the jurisdiction of the HKSAR. In particular, despite the gap in the specialty protection arrangements, there existed the provisions of the Basic Law relating to the rights and freedoms and to the judiciary. Also, the House of Lords, which delivered its judgment in May 1997, noted that it was stated policy of the Hong Kong Government and of the incoming Government of the HKSAR that it would not surrender persons to places outside its jurisdiction otherwise than pursuant to a law and subject to safeguards.

Based on the evidence before it the Commission does not find any reason to reach a different conclusion. The Commission notes in

particular that the applicant has not claimed that there exists any law which could in some manner serve as a basis for his transfer to the P.R.C. or that there has been an indication that this would be requested.

The signing of the agreement of 5 November 1997 represents in the view of the Commission a further important safeguard against the risk of the re-surrender of the applicant from the HKSAR to other parts of the P.R.C.

It is true, as pointed out by the applicant, that the agreement has not yet entered into force and that its terms, including the terms of its Article 18, have as yet not been the subject of judicial examination. Nevertheless the Commission finds in the agreement a clear indication on the part of the contracting parties that fugitive offenders, once surrendered by the United Kingdom to the HKSAR in respect of specific offences, would not be transferred to other parts of the P.R.C. without the consent of the United Kingdom. The Commission finds no reason to doubt that the parties to the agreement would abide by its letter and spirit even if a fugitive offender were to be surrendered to the HKSAR before the agreement came into effect. Indeed, under international treaty law parties which have signed a treaty are under an obligation not to jeopardize the object and purpose of the treaty before its final entry into force. This rule of customary international law is to be found codified in Article 18 of the Vienna Convention on the Law of Treaties. Any transfer to the P.R.C. of a fugitive extradited by the United Kingdom to the HKSAR even before the entry into force of the agreement of 5 November 1997 would jeopardize the very purpose and object of this agreement.

Insofar as the applicant refers to the "act of State" doctrine, the Commission finds that he has not convincingly shown that this would apply in any way in his case. The Commission notes in particular that in accordance with Article 19 of the Basic Law the "act of State" doctrine concerns primarily, if not exclusively, "defence" and "foreign affairs". Furthermore, the way this doctrine operates is apparently that in the examination of a case before the courts in the HKSAR "questions of fact" concerning acts of State have to be accepted as established as they are stated in a certificate obtained from the executive. It is unclear how in these circumstances the "act of State" doctrine, even if it is applied in a context wider than defence and foreign affairs, could bring about the transfer of the applicant to other parts of the P.R.C. or could otherwise affect him.

In sum, having regard to all the evidence in the case, the Commission finds that the applicant has not established the existence of a real risk, let alone a "near-certainty", that in the event of his extradition to the HKSAR he would be deprived of life in violation of Article 2 (Art. 2) of the Convention or subjected to torture or inhuman treatment or punishment contrary to Article 3 (Art. 3).

This part of the application is therefore manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 6 (Art. 6) of the Convention that if extradited he would face a real risk of a flagrant denial of his right to a fair trial.

Article 6 (Art. 6) of the Convention, insofar as relevant, provides as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
..."

The parties refer partly to their observations as regards the complaints under Articles 2 and 3 (Art. 2, 3) of the Convention.

The Government also address the issue whether or not a State's responsibility can be engaged by extraditing an individual to a State in which it appears that his trial will not, or might not, be conducted in accordance with Article 6 (Art. 6) of the Convention. The Government refer to the Soering judgment (Eur. Court HR, loc. cit.) and to the Commission's decision in application no. 10308/83, D.R. 36, p. 209 and state that there is no general principle that a possible breach in the receiving State of any of the rights and freedoms guaranteed by the Convention would engage the extraditing State's responsibility, the only exception in the case-law having concerned Article 3 (Art. 3) of the Convention. The Government submit that the extraditing State's responsibility may also conceivably be engaged in respect of other provisions of the Convention, but only where the rights and freedoms at risk are among those most fundamental rights and freedoms for which Article 15 (Art. 15) of the Convention allows no derogation, and when the alleged violation in a particular case would be "exceptional" and "flagrant".

The Government then point out that Article 6 (Art. 6) of the Convention is not among the provisions for which Article 15 (Art. 15) allows no derogation and contend that the applicant has not established that his case is exceptional or that he faces a real risk of flagrant denial of a fair trial.

As regards the alleged violations of the Convention related to the passage of time the Government submit that this issue has been dealt with in detail by the domestic courts, which found that the applicant, who was "intentionally covering his tracks as well as avoiding arrest", was responsible for most of the delay.

In respect of the issue of State responsibility the applicant replies that other provisions of the Convention, notably Article 6 (Art. 6), may also be breached by an extraditing State because of risks concerning events in the receiving State. The applicant dismisses as being without sound foundation the Government's argument that this can happen only in cases concerning complaints under provisions in respect of which no derogation is allowed according to Article 15 (Art. 15) of the Convention. He refers to the cases decided under Article 8 (Art. 8) of the Convention. Also, in the Soering judgment (Eur. Court HR, loc. cit.) the Court did not exclude that an issue might be raised under Article 6 (Art. 6) where a fugitive subject to an extradition order risks a flagrant denial of a fair trial in the country requesting extradition. Moreover, the Court in the case of Drozd and Janousek v. France and Spain (Eur. Court HR, judgment of 26 June 1992, Series A no. 240), considering a complaint about imprisonment in France following a conviction in Andorra, found that although "the Convention does not require the Contracting Parties to impose its standard on [third] States", they are "obliged to refuse their co-operation if it emerges that the conviction is a result of a flagrant denial of justice". The applicant submits that, just as France had to consider the fairness of a trial abroad before receiving and detaining prisoners, so the United Kingdom cannot ignore a blatantly unfair trial in the HKSAR which will follow their decision to extradite him.

As regards the passage of time, the applicant reiterates that if extradited he would be tried some 19 years after the alleged offences. He submits that the way in which the Divisional Court and the Secretary of State dealt with his ensuing arguments was wholly illogical. They relied on the fact that the applicant "took steps to conceal ... that the trail" led to him, which was not true. Moreover, this reasoning

is incompatible with the presumption of innocence and therefore with Article 6 para. 2 (Art. 6-2) of the Convention. Also, between 1989 and 1993 the applicant was travelling with his own passport and could have been easily apprehended. The United Kingdom Government are directly responsible for the delay between March 1990 until the present.

The Commission need not decide whether the responsibility of a returning State may be engaged under Article 6 (Art. 6) of the Convention where a fugitive risks a flagrant denial of a fair trial in the requesting State, since the Commission considers that it has in any event not been shown that such a risk exists in the applicant's case.

The Commission refers in this respect to its findings concerning the preservation of the HKSAR criminal justice system.

As regards the complaint concerning the passage of time since the alleged offences and its effect on the fairness of the trial, the Commission notes that the domestic courts dealt fully with the applicant's allegations, which were substantially the same as those advanced now before the Commission. The Commission does not consider that the findings of the domestic courts concerning the responsibility for the delay and its likely effects were arbitrary or unreasonable.

Furthermore, the Commission notes that in the event of the applicant's extradition it will be open to him to raise an objection before the HKSAR courts which will then have to examine, inter alia under Article 87 of the Basic Law which guarantees the right to a fair trial, whether or not in all the circumstances of the case a fair trial could take place.

Insofar as the applicant has also invoked Article 6 para. 2 (Art. 6-2) of the Convention in that the domestic courts in the United Kingdom allegedly presumed his guilt when stating, in the context of the issue of passage of time, that he was covering his tracks, the Commission does not consider that this violated the presumption of innocence. The impugned statement was made in the context of the Court's assessment of the question whether the applicant's conduct objectively contributed to the delay in the proceedings and cannot in the view of the Commission be interpreted in any way as a finding that the applicant was guilty of the offences with which he is charged.

The Commission finds, therefore, that this part of the application is also manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains under Article 8 (Art. 8) of the Convention that his extradition would be an unlawful and disproportionate interference with his right to respect for his family life.

This provision, insofar as relevant, provides as follows:

> "1. Everyone has the right to respect for his ... 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 ..."

The parties have not made observations separate from the general submissions summarised above.

The Commission recalls that the Convention does not guarantee a right not to be extradited (Eur. Court HR, Soering judgment, loc. cit., p. 33, para. 85; cf. No. 10427/83, Dec. 12.5.86, D.R. 47, p. 85).

Nevertheless, an extradition decision may constitute an interference with the right to respect for family life. Such an interference is in breach of Article 8 (Art. 8) unless it is justified under paragraph 2 of this provision as being "in accordance with the law" and "necessary in a democratic society" for one of the aims set out therein (No. 25342/94, Dec. 4.9.95, D.R. 82, pp. 134, 148).

The Commission finds that the applicant's extradition would amount to an interference with his family life, it being common ground that his wife currently lives in the United Kingdom.

However, it appears undisputed that the decision to extradite the applicant complied with the formal requirements of United Kingdom law. As regards the applicant's claim that his extradition some 19 years after the alleged offences would be contrary to legal certainty and that the courts' approach to the issue of the passage of time was not reasonably foreseeable the Commission has already found that when examining whether extradition should be allowed the decisions of the domestic courts were neither arbitrary nor unreasonable.

Furthermore, the Commission finds that the decision to extradite the applicant has a legitimate aim, namely the prevention of disorder or crime.

As regards the question whether the interference was necessary, the Commission recalls that the notion of necessity implies a pressing social need and requires that the interference at issue be proportionate to the legitimate aim pursued (Eur. Court HR, Beldjoudi v. France judgment of 26 March 1992, Series A no. 234-A, p. 27, para. 74).

The Commission considers that it is only in exceptional circumstances that the extradition of a person to face trial on charges of serious offences committed in the requesting State would be held to be an unjustified or disproportionate interference with the right to respect for family life. The Commission finds that in the present case no such circumstances have been shown to exist. The Commission notes that the applicant and, apparently, his family lived in Hong Kong for about ten years. Also for several years prior to the applicant's arrest they were living outside the United Kingdom and were changing their domicile. Furthermore, the applicant has not shown that his wife or children would not be able to travel with him to the HKSAR or visit him there.

The applicant's complaint under Article 8 (Art. 8) of the Convention is therefore manifestly ill-founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant has also invoked other provisions of the Convention. Under Article 5 (Art. 5) of the Convention he states that this provision includes the implicit requirement of promptness in dealing with extradition matters and precludes extradition which would give rise to a serious risk of arbitrariness and unjustified detention. The applicant has also invoked Articles 7 and 14 (Art. 7, 14) of the Convention.

Assuming that an issue involving the responsibility of the United Kingdom may arise, the Commission notes that these complaints are partly based on the same factual allegations as regards the situation in the HKSAR which have already been dealt with above. In any event, the Commission finds that they do not disclose any appearance of a violation of the Convention.

It follows that this part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant also complains under Article 13 (Art. 13) of the Convention stating that he did not have an effective remedy in the United Kingdom against the alleged breaches of his Convention rights.

Article 13 (Art. 13) of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government submit that the issue is indistinguishable from that in the case of Vilvarajah (Eur. Court HR, loc. cit.) where it was held that the judicial review of the decision of the Secretary of State under United Kingdom law provided an adequate remedy.

The applicant submits that the House of Lords limited its review of the decisions of the Secretary of State to the issue of irrationality. Such scope of review of the executive's decision allegedly does not measure up to the Article 13 (Art. 13) standard described in the case of Vilvarajah (Eur. Court HR, loc. cit.).

The Commission agrees with the Government that in the present case there are no elements which would lead to a conclusion different from that in the Vilvarajah judgment (loc. cit.).

It follows that the remainder of the application is also manifestly ill-founded and has to be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M. de SALVIA Secretary to the Commission	S. TRECHSEL President of the Commission