THE FACTS

The applicant is a citizen of the United Kingdom, born in 1922, and at present detained in W. Prison, Yorkshire. He is represented before the Commission by Mr. B., a solicitor practising in Leeds.

1. The applicant lodged two previous applications with the Commission. In the first, No. 2759/66, he submitted the following facts. In February 1955 he was convicted of rape and sentenced to 10 years' imprisonment. In July 1955 the Court of Criminal Appeal changed the sentence to one of life imprisonment. He was detained in prison until February 1964, when he was released on licence until July 1964. He was then returned to prison but again released on licence in May 1966.

In that application he made the following complaints: that he had been improperly convicted, that his sentence had been improperly increased, that he had been refused a retrial, that the Home Secretary had refused to disclose the medical reports on him prepared during the period of his imprisonment (all of which - he said - stated that he was sane) and that his private life had been interfered with.

On 10 July 1967 the Commission declared the application inadmissible (1). The applicant's complaints concerning conviction and sentence were found to be outside the competence of the Commission ratione temporis. His complaint that he had not been allowed a retrial was held to be outside the competence of the Commission ratione materiae and so was his complaint concerning the failure to supply him with the medical reports. The complaint of interference with his private life was held to be manifestly ill-founded.

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(1) Decision not published.

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2. In this second application No. 5170/71, the applicant submitted the following facts. He was again in prison, apparently because he had broken the terms of his release on licence by leaving the United Kingdom for Ireland. He stated that his imprisonment was continued because of a false report which stated that he was a psychopath and he claimed that this report prevented the Parole Board from giving his case impartial consideration and so being able to order his release.

The applicant stated further that he wished to obtain an independent specialist examination to determine his mental condition. With this in view he had attempted to send copies of the allegedly false medical report to various people including a solicitor, but his letters to these persons had been suppressed or delayed.

He complained to the Commission that he was held in prison on a life sentence and that because of a false report concerning his mental state he could not be released on parole. He also complained of interference with his correspondence.

On 29 May 1972 the Commission declared the application inadmissible (1). All the complaints were held to be manifestly ill-founded.

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(1) Decision not published.

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3. In his present application the applicant again repeated his complaint about being unable to obtain the disclosure of certain official medical reports which he claimed would show that he was sane. He also repeated his complaint that he was not able to obtain a psychiatric examination by an independent specialist. As both these complaints had been included in the applicant's previous applications they were declared inadmissible by a Partial Decision of the Commission on 10 July 1973 (1). At the same time, however, the Commission decided

to communicate to the United Kingdom Government for their written observations on admissibility the applicant's complaint that there had been interference with his correspondence by the prison authorities and in particular that there had been suppression of letters to the Law Society when the applicant was seeking legal aid to bring proceedings.

The Commission decided not to communicate for observations on admissibility the applicant's complaint that he was prevented from applying to the court for an order of Certiorari against the Parole Board but to ask the Government to give further information about the facts relevant to this complaint. It, therefore, asked the Government to inform it of the circumstances in which the Parole Board had refused to recommend the applicant's release and the reasons for the Parole Board's decision.

The Commission decided to take no action in respect of an allegation by the applicant that he had been hindered in the presentation of his application to the Commission in not being allowed to submit a typed application form.

4. The facts of (the remaining part of) the present application presented by the Parties and apparently not in dispute between them may be summarised as follows:

On .. February 1955 at the York Assizes the applicant was convicted of indecent assault and rape of an eleven year old schoolgirl and was sentenced to ten years' imprisonment. He maintained (and still maintains) that he was not guilty but he was refused leave to appeal against his conviction. He was, however, granted leave to appeal against his sentence and appeared before the Court of Appeal. That court, instead of reducing the sentence as the applicant had hoped, changed it to one of life imprisonment. The Lord Chief Justice who presided at the hearing took note that the applicant already had a criminal record which included arson and sending explosives through the post and that he had previously been detained in B. The applicant says that this was quite unjust because there had been no suggestion that he was suffering from mental illness in 1955. He had been in B. (a special hospital for criminal lunatics) from 1947 until 1949 but the applicant maintains that he was never insane. Although he was found "guilty but insane" in 1947 he was never able to appeal against this verdict because technically it was an acquittal and, at the time, there was no appeal against it. It seems that the law was subsequently changed and that such a verdict would now be open to appeal.

The applicant served nine years of his life sentence. He seems at all times to have maintained that he was mentally normal and in 1963 a petition was prepared on his behalf for presentation to the House of Lords. Early in 1964 he was released on licence, then shortly after his release he was recalled to prison for allegedly refusing to co-operate with his supervisory officer. He was again released on licence in May 1966 but was then convicted of assault and theft and had to serve another sentence of six months. In November 1966 he was released on licence (the same licence as had been imposed in May) but in August 1967 the police were investigating an alleged indecent assault by the applicant when he went to Ireland. He was arrested in Dublin, brought back to England and on .. March 1968 he was sentenced at the York Assizes to nine months' imprisonment for the indecent assault. When this sentence ended the Parole Board reviewed his case but did not recommend his release on licence. His detention (life sentence), therefore continued.

Section 61 of the Criminal Justice Act 1967 allows the Secretary of State to release on licence a prisoner who has been sentenced to life imprisonment. But he may only do this after consulting with the Lord Chief Justice and the trial judge, if available, and after a recommendation by the Parole Board. If the Parole Board does not recommend the prisoner's release the Home Secretary cannot order it,

but if the Parole Board does recommend the release the Home Secretary may still refuse it. The Home Secretary may revoke a prisoner's licence and recall him to prison under Section 62 of the Act but if the Parole Board then recommends his immediate release, he must be released (Section 62 (5)).

The Parole Board examined the applicant's case again in March 1970. It wanted to have an electro-encephalogram made on applicant but he refused. He said that it would be superfluous and he considered his confinement illegal. The Board decided not to recommend release on licence in June 1970 and came to the same decision in 1971 and 1972. It will next review the case during the course of 1974. The applicant maintains that there is a false medical report circulating which states - incorrectly - that he maintains an unhealthy interest in young boys. The applicant states that this is not true and he would like to be examined by independent medical experts.

On .. June 1972 the applicant wrote to the Law Society saying that he would like to apply to the Divisional Court of the Queen's Bench for an order of Certiorari requiring the Parole Board to order his release. He sent similar letters to the Master of the Crown Officer, the Official Solicitor, the National Council for Civil Liberties, "Justice" and his Member of Parliament. On .. June the Prison Governor was informed by the Home Office that the letters should be stopped. The Home Office considered that they were an attempt to commence legal action. The applicant was to be told that if he wished to commence legal action he should consult a solicitor and if the solicitor thought that he had ground for action the matter would then be considered to see if he should be allowed to proceed. On .. June the applicant petitioned for leave to seek legal advice and was sent the following reply (on .. June):

"The Secretary of State has fully considered your petition. You may use one of your ordinary letters to seek legal advice and if you are advised that you have grounds for action, you may petition again when it will be decided whether or not you should be allowed to proceed."

The applicant wrote to his solicitor who replied on .. July 1972 saying that it would be just for permission to be granted to him to bring proceedings for the order he was seeking. He added that as the matter was complex, success depended on the grant of legal aid. On .. July the applicant wrote to the Law Society and applied for legal aid. This letter was stopped by the prison authorities on the ground that the applicant had not sought the permission of the Secretary of State to proceed with his action.

On .. August the applicant again petitioned the Secretary of State saying that he had a right to apply to the courts for an order of Certiorari and that he had a right to apply to the Law Society for legal aid and to correspond with the persons with whom he had tried to correspond in June. But he did not state that he had been advised that he had grounds for bringing legal proceedings nor did he submit any evidence of such advice. The applicant petitioned again on .. September and .. October 1972. On .. April 1973 the applicant's petition was refused in the following terms:

"The Secretary of State has fully considered your petition but can find no ground for taking any action in regard to it. The Secretary has nothing to add to his reply to your petition dated .. June 1972 regarding the writ of Certiorari."

On .. October 1972 the applicant's solicitor wrote to him saying that it was necessary for him to petition the Home Secretary for permission to institute proceedings or at least seek legal advice on the question of Certiorari. The solicitor also wrote at the same time to the Home Secretary saying that he had advised the applicant to petition about the proposed legal action and asking to be informed as to the Secretary

of State's attitude. On .. April 1973, the Home Office replied, informing the solicitor that the applicant had already been told on .. June 1972 that he could take legal advice and that if he was advised that he had grounds for action he might submit a petition when it would be decided whether or not he should be allowed to proceed. On .. May 1973 the solicitor wrote to the Home Office saying that in his opinion the applicant had grounds for proceeding with his application for a writ of Certiorari against the Parole Board. On .. June 1973 the Home Office wrote to the solicitor asking him to give details of the nature of these grounds. The solicitor replied on .. October 1973 and set out the grounds on which the applicant relied:

"In relation to Mr. X. of H.M. Prison W., we now have pleasure in informing you of the grounds which Mr. X. relies on for his application for a writ of Certiorari: -

1. That the Court of Appeal in 1955 improperly presumed that Mr. X. was mentally unstable, on which occasion they substituted for a 10 year sentence, a life sentence.

2. That the medical evidence, according to Mr. X., is that he is of sound mind and suffering from no mental disorder affecting his conduct.

3. That he has been given no opportunity of disputing this presumption that he suffers from some form of mental disorder.

We look forward to hearing from you in due course.".

(This letter was written almost exactly the time when the Government were filing their original written observations on admissibility. These observations were sent on 23 October). The Home Office wrote back on .. November:

"The Secretary of State has considered the grounds put forward in your letter on which Mr. X. relies on for his application for a writ of Certiorari against the Parole Board and has decided that he does not wish to object to an application being made to the court on Mr. X.'s behalf.".

On .. October 1972 the applicant wrote to his solicitor enclosing a copy of the letter he had written to the Law Society on .. July 1972. The Assistant Governor of the prison saw the applicant and explained that he could not send out a copy of a stopped letter. He could, therefore, remove the enclosure and omit all reference to it and he would then be allowed to send the letter to his solicitor. The applicant refused to speak to the Assistant Governor, who, in the end, allowed the letter to be sent without the enclosure.

In October 1972 the applicant complained through his Member of Parliament to the Parliamentary Commissioner saying the Home Office had interfered with his attempts to take legal proceedings. The Parliamentary Commissioner found that there was no basis for the applicant's complaint and expressed himself satisfied that the Home Office had acted in accordance with the Prison Rules and that the reason the applicant's letters were stopped was that he had failed to comply with the required procedure.

Complaints

The applicant complained that the prison authorities interfered with his correspondence and, in particular, that they at one time prevented him from writing to the Law Society when he sought legal aid in order to begin proceedings to get a writ of Certiorari.

SUBMISSIONS OF THE PARTIES
OBSERVATIONS OF THE GOVERNMENT (October 1973)

I. Prisoners' Communications

The Prison Rules 1964, made by the Secretary of State under Section 47 of the Prison Act 1952, place certain restrictions on communications between prisoners and other persons. Rule 34 sets out various entitlements of a prisoner in relation to the sending and receipt of letters but Rule 34 (8) provides that a prisoner shall not be entitled to communicate with any person in connection with any legal or other business, or with any person other than a relation or friend, except with the leave of the Secretary of State.

A prisoner who wishes to discuss a legal action with a solicitor must, therefore, obtain the permission of the Secretary of State before communicating with him. In deciding whether or not to grant leave, the Secretary of State takes into account the extent to which the particulars contained in the request reveal a possible cause of action. Leave will not normally be granted if the particulars are insufficient to indicate the precise nature of the complaint but in this case the prisoner is normally invited to submit further particulars.

II. Release on Licence

The Criminal Justice Act 1967 enables the Secretary of State to release prisoners on licence before their term of imprisonment expires. The Secretary of State may only release a life prisoner if recommended to do so by the Parole Board which is an independent body constituted under the Act. If a life prisoner is released and then recalled to prison, the Secretary of State is obliged to release him once the Parole Board recommends that this is done.

Prisons also have local Review Committees which examine the suitability of prisoners for release on licence. These Committees consist of the prison Governor and at least four other persons appointed by the Secretary of State. It has been the practice of the Secretary of State to refer cases of prisoners on life sentences to the Review Committee after they have served seven years. The practice was changed recently and the present practice is to send a case to the Parole Board when a life prisoner has served about four years, a decision is then reached on when the case should be referred to the local Review Committee.

III. Consideration of Admissibility

The respondent Government submit that the United Kingdom practice concerning communications by prisoners is consistent with the Convention. Detention in prison necessarily involves a deprivation of liberty going beyond the mere fact of confinement (the Government refer to application No. 892/60, 4 YB, p. 240 - the German marriage case - and to application No. 2749/66, 10 YB, p. 388 - de Courcy v. the United Kingdom, Final Decision). The artificial atmosphere in prison leads some prisoners to labour under imaginary grievances, others would like to pass the time in litigation while a third category see litigation as a way of striking back at the authorities or circumventing prison discipline. Article 8 leaves to States a margin of appreciation in its application and the above considerations should be noted when examining the system of control provided by Rules 33 and 34 (8) of the Prison Rules.

In particular it should be noted that the correspondence in the present case related to the conditional release of a prisoner - this is not a right guaranteed by the Convention (application No. 1760/63, 9 YB, p. 166). The respondent Government, therefore, submit that the application is, in this respect, manifestly ill-founded.

Alternatively the Government submit that such restrictions as are provided by the Prison Rules and practice are permitted by Article 8 (2). In this respect the Government refer to the decision of the European Court of Human Rights in the Vagrancy cases.

In the further alternative, the Government submit that the applicant's correspondence was stopped because he failed to follow the correct procedure indicated to him by the Secretary of State. He thus failed to comply with the requirements of Article 26 of the Convention that all domestic remedies should be exhausted. In support of this further submission, the Government refer the Commission to its Final Decision on the admissibility of application No. 2749/66, de Courcy v. the United Kingdom (10 YB, p. 388, at p. 410) and to its Final Decision on the admissibility of application No. 4471/70, Y v. the United Kingdom.

Lastly (letter of 4 December 1973 from Government Agent to Commission's Secretary) the Government explain that the applicant's solicitor has now set out the grounds upon which the applicant relies for his application for a writ of Certiorari. He did this in a letter dated .. October 1973. The Home Office replied on .. November saying that the Home Secretary would not object to the making of an application for a writ of Certiorari. In view of these developments, the Government submit that the applicant cannot be considered a victim of a violation of the Convention and accordingly the application has lost its pertinence.

The Government submit that the application is manifestly ill-founded, or alternatively that it is inadmissible for non-exhaustion of domestic remedies, or alternatively that it has lost its pertinence.

IV. Parole Board's decision

When the above case was communicated to the Government, the Commission, besides asking for observations on admissibility in regard to allegations under Article 8, also sought information on the circumstances in which the Parole Board refused to recommend the applicant's release and on the reasons for the Board's decision.

As already explained, the Parole Board is an independent statutory body whose function is to advise the Home Secretary on matters connected with the release on licence and the recall of prisoners. Its functions are advisory and it has no power to order the release of a prisoner, although the Home Secretary cannot usually release prisoners on licence unless the Board so recommends. The Board is not obliged to give reasons for its recommendations and it gave no reasons in the applicant's case.

As regards the circumstances in which the Board refused to recommend the applicant's release, the Board would of course have had before it the applicant's past history going back to his detention in B. in 1947 following his conviction for theft and sending explosives through the post.

OBSERVATIONS OF THE APPLICANT (7 December 1973)

(Although the applicant has the assistance of a solicitor and has been granted legal aid, he drafted his own observations in reply to the Government and these were forwarded to the Commission in his own handwriting).

Background

The applicant explains that he was originally sent to B. in 1947 after being found "guilty but insane". As this was technically a verdict of "not guilty" he could not appeal against it. He was released in 1949. In 1955 he was accused of rape - again he denied his guilt. At his trial his mental stability was at no time called into question. The Court of Appeal changed his sentence to one of life imprisonment without having any good reason to suspect that he was mentally unstable. At no time has he ever had treatment for mental disorder while in detention. He was released on licence in 1964 but was then

harassed by the police who kept coming to his place of work and asking questions about brutal murders. To escape the harassment he changed his address and the Home Office then revoked his licence. The applicant was again released in 1966 (after prior medical reports stated that he was not mentally disordered) but sent back to prison for allegedly trying to strangle a policeman. When he was next released he found that the police were trying to harass him and so he decided to go to Ireland. According to the applicant, it was not a condition of his licence that he should remain in the United Kingdom. He was arrested, brought back to England, convicted of indecently assaulting a young boy and has been in prison ever since. The sentence imposed upon him for the indecent assault was only nine months in prison and he finished that sentence in August 1968. Since then he has been detained on the life sentence.

In 1970 the applicant complained to the Board of Visitors about a medical report which he considered was both false and prejudicial. Nevertheless, the Home Secretary refused to disclose medical reports in his possession or to allow the applicant to be examined by independent experts. The applicant maintains that the Home Office do not wish his mental condition to be properly determined and that they had at various times made incorrect and defamatory statements for which there was no good cause. The Home Office is now keeping the applicant detained on the wholly incorrect assumption that he is mentally unstable.

The applicant agrees that he has refused to have an electro-encephalogram made, but this was because the medical reports showed he was completely normal and he considered that an electro-encephalogram was completely superfluous. The Home Office would not disclose the medical reports showing that he was normal and refused to allow him to be examined by independent specialists. He was also kept in prison whereas had he really been mentally unstable he should have been kept in a special mental home.

Reply to Government's Arguments

The applicant maintains that the letters he wrote, which were suppressed by the prison authorities, were a statutory entitlement. They were written to persons of good repute and in no way offended against good order or discipline or constituted any incitement to crime and their sole purpose was to secure justice - a point of no importance to the Home Office.

The applicant does not accept that the Home Secretary has any right to put his office above the law in deciding whether or not to grant a request for legal advice. On .. June 1972 the Home Office told the applicant that he could use one of his ordinary letters to seek legal advice and that if he were advised that he had grounds for action, he could petition again, when it would be decided or not that he should be allowed to proceed. But he was not allowed to apply for legal aid under the Legal Aid and Advice Acts and his letters applying for legal aid were suppressed. It was incorrect to say, as the respondent Government now said, that the letters which were stopped could be regarded as an attempt to commence legal action. No legal action could possibly be instituted on the basis of such letters. It is clear that the Home Office were obstructing the applicant's attempts to obtain justice from the way that they delayed until April 1973 before replying to three of his petitions. The Home Office knew (by implication) from the applicant's petitions of August, September and October 1972 that he had been advised that he could go ahead with his application for a writ of Certiorari.

The applicant also states that letters to his Member of Parliament were stopped but does not give details.

Stopping of letters from the Applicant to his Solicitor

When the applicant's case had been communicated to the Government and the applicant had the assistance of a solicitor, the applicant continued to write to the Commission saying that letters to his solicitor were being stopped. The Commission's Secretary wrote to the solicitor to enquire about this and he replied (letter of .. August 1973):

"Thank you for your letter of 14 August 1973. Mr. X. is permitted to write to me; I have received innumerable letters from him of late.".

Final Point

When the applicant and his solicitor were informed (November 1973) that he would, after all, be permitted to take proceedings to try to obtain a writ of Certiorari, the solicitor commenced as follows (letter to Secretary dated .. February 1974):

"... Whilst it is true that Mr. X. was granted permission to make an application for a writ of Certiorari, since that date Mr. X. has been refused legal aid to make such an application in the English Courts. This, in fact, prevents him from making such an application, as he has not got the necessary finance involved in such an application.".

THE LAW

I. Insofar as the applicant now wishes to complain that he was not able to obtain an order of Certiorari against the Parole Board, the Commission has examined this complaint under Article 6 (Art. 6) of the Convention. This article provides that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair .... hearing within a reasonable time by an ... impartial tribunal ...".

Nevertheless, having carefully examined the facts of the case, the Commission has come to the conclusion that the order of Certiorari in question related neither to a civil right (or obligation) nor to a criminal charge. The proceedings which the applicant wanted to institute were of an administrative nature and could not come within the scope of Article 6 (Art. 6). It does not seem that any other article of the Convention could be considered relevant and the Commission recalls that, under Article 25 (1) (Art. 25-1) of the Convention, it is only the alleged violation of one of the rights and freedoms set out in the Convention that can be the subject of an application presented by a person, non-governmental organisation or group of individuals. The Commission has in many previous decisions held that there is no right under the Convention to institute administrative proceedings and has also held that there is no right under the Convention for a convicted prisoner in England to apply for the prerogative writ of Habeas Corpus (see application No. 3076/67 and application No. 3505/68, Collection of Decisions, Vol. 29, p. 60). Certiorari, like Habeas Corpus, is a prerogative order of an administrative nature and similar reasoning applies.

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

II. The same ground of inadmissibility applies to any complaint made by the applicant to the effect that he was not granted legal aid to assist him in making his application for Certiorari. Article 6 (3) (c) (Art. 6-3-c) of the Convention refers specifically to the grant of legal aid but for someone "charged with a criminal offence". Legal aid may also sometimes be relevant to the concept of a "fair hearing" under Article 6 (1) (Art. 6-1) of the Convention, but neither Article 6 (3) (c) (Art. 6-3-c) nor Article 6 (1) (Art. 6-1) can relate to administrative proceedings. Any complaint about failure to grant legal aid for administrative proceedings must be incompatible ratione

materiae with the provisions of the Convention (see again application No. 3076/67).

III. Insofar as the applicant wishes to complain that the authorities have interfered with his correspondence, the Commission has examined this complaint in the light of Article 8 (Art. 8).
Article 8 (1) (Art. 8-1) provides that "Everyone has the right to respect for his ... correspondence" while Article 8 (2) (Art. 8-2) provides that "There shall be no interference ... with the exercise of this right such as is in accordance with the law and is necessary ... for the prevention of disorder or crime".

In the present case the applicant has not shown that he was ultimately prevented from writing to anyone. When he originally tried to begin proceedings to obtain an order of Certiorari, he was told that he should proceed in a certain way. Provided he followed the stipulated procedure, he would be allowed to send out his letters. The applicant failed, at various stages, to follow the procedure laid down and his letters were stopped. But, as soon as he did as he was instructed, his letters were allowed to pass. In the end he was allowed to write both to his solicitor and to the Law Society. The procedure fixed by the Home Office was in accordance with the law (the Prison Rules) and was a control procedure justified for the prevention of disorder or crime within the meaning of Article 8 (2) (Art. 8-2).

It is true that such a procedure could be abused by the authorities and might thus raise a serious question as to whether there had been any appearance of a violation of the rights and freedoms set out in the Convention and in particular in Article 8 (Art. 8).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

For these reasons, the Commission DECLARES THE REMAINING PART OF THIS APPLICATION INADMISSIBLE