THE FACTS

The facts presented by the Parties and apparently not in dispute between them may be summarised as follows:

The applicant was born in the Bahama Islands, then a British colony, in 1932. He is now detained in D. Hospital, Berkshire, England. He is represented before the Commission by Mr. C., Solicitor, London.

Between 1954 and 1963 the applicant was convicted in the Bahamas of a number of offenses involving violence. He was sentenced in 1963 to ten years' imprisonment and then while in prison, in July 1968, he killed a prison warder. On .. October 1968 he was convicted of murder and sentenced to death. He appealed against the conviction but the appeal was rejected. He also petitioned for a commutation of the death sentence. This was first refused but in March 1969 the Governor of the Bahamas commuted the death sentence to one of life imprisonment. The Bahamas Government then requested that the applicant be removed to an institution in the United Kingdom. This was possible under a United Kingdom statute, the Colonial Prisoners Removal Act 1884. The request was made because the authorities thought that there was no prison in the Bahamas where the applicant could serve his sentence. He had a record of violence and has killed a warder in the one prison where it might have been possible to detain him. An Order under the 1884 Act was accordingly made by the United Kingdom Secretary of State and was concurred in by the Governor of the Bahamas.

It seems that the applicant had never visited England before and had no personal links with England. His mother, his wife, and his five children were all resident in the Bahamas. On arrival in England (March 1969) the applicant was sent to A. prison; later he was sent to B. and the to C. - all maximum security prisons. In December 1971, two doctors reported that the applicant was suffering from mental illness (paranoid psychosis) and that he should be sent to a mental hospital. On .. February 1972 the applicant was transferred to D. Hospital where he remains.

On various occasions the applicant has petitioned the United Kingdom authorities asking to be transferred back to the Bahamas or to be allowed to make periodic visits to his family there. His requests have been refused.

The Bahamas achieved independence on 10 July 1973. Since then, it seems that the United Kingdom has been discussing with the Bahamian authorities the question of repatriating prisoners held in England under the Colonial Prisoners Removal Act. But as the Bahamian authorities have other pressing problems to deal with, it seems that no final decision has yet been reached.

Complaints

The applicant does not appear to complain about his detention as such. He complains, however, that being from the Bahamas, having always lived there and having been sentenced there for a crime committed there, he should serve his sentence in his home country. He claims that his detention in the United Kingdom constitutes a violation of Articles 3 and 8 of the Convention.

SUBMISSIONS OF THE PARTIES

Submission of the respondent Government (4 June 1973)

The Government explains that at the time of the applicant's removal to the United Kingdom, the Bahamas were a British Colony although they enjoyed a large measure of internal self government.

Section 2 of the Colonial Prisoners Removal Act 1884 provides for the removal of colonial prisoners to the United Kingdom (or to other colonies) when (inter alia) there is no prison in the colony in question where "the prisoner can properly undergo his sentence or otherwise the removal of the prisoner is expedient for his safer custody or for more efficiently carrying his sentence into effect".

The Bahamas are no longer a British Colony. But the applicant's principal complaint relates to the fact that he is not allowed to serve his sentence there. This complaint is therefore outside the territorial competence of the Commission and is incompatible (see Application No. 1065/61, Yearbook, Vol. IV, p. 250 Belgian Congo case).

Article 8

Insofar as the applicant complains of a violation of Article 8 of the Convention, the Government submit that detention in a prison pursuant to a sentence passed on conviction for a criminal offence necessarily involves a deprivation of liberty going beyond the mere fact of confinement. Certain consequences are inherent in the fact of imprisonment (see Application No. 2676/65 - Collection of Decisions, Vol. 23, p. 31 at p. 37) and a margin of appreciation is permitted to States. The Government do not dispute that the effects of imprisonment may be more severe in some cases than in others and this may be the case where it is necessary to take measures in respect of persons whose record and disposition require particular precautions to be taken. They submit, however, that where such precautions are taken for the purposes specified in Article 8 (2) and are within the margin of appreciation accorded to States, they are justified under the Convention.

The applicant has a record of violence, including the violent murder of a prison warder. This murder took place in the principal prison in the Bahamas and the authorities concluded that there was no prison or mental institution in the Bahamas suitable for the applicant's confinement when his death sentence was commuted. Accordingly the authorities had no alternative but to move the applicant to a secure place outside the Bahamas. The applicant's removal from the Bahamas inevitably made it more difficult for his family to visit him but this was a natural and inevitable consequence of his removal to a place of security.

It is thus submitted that, insofar as the applicant is complaining about his removal from the Bahamas and his separation from his family, his complaint is manifestly ill-founded.

Furthermore it should be noted that the applicant has exactly the same rights to visits as anyone else detained in the institutions where he is (or was) detained. Persons in prison are allowed a certain number of visits - there is no restriction on visits to persons in special hospitals like D.. The only reason why members of the applicant's family have not visited him is the practical difficulty caused by the distance involved. What the applicant is really seeking is a right separate from, and additional to, the right to respect for family life, namely a positive right which requires the State authorities to make financial provision for visits to prisoners by their families. This is not a right covered by the Convention, nor does the Convention grant any right for a prisoner to be detained in a particular place (see Application No. 2516/65, Collection of Decisions p. 28 at p. 38). Examined in this way, the applicant's complaint is incompatible.

The applicant has also requested that he be returned to the Bahamas from time to time to receive accumulated visits. Apart from the fact that this is not provided for under the 1884 Act and the fact that there are no public funds to cover it, such temporary transfer would create security difficulties in the Bahamas.

Article 3

The applicant does not complain about the fact of his confinement. He complains only about the place of his confinement, the distance from his family and the separation which results directly from this distance. It is submitted that such matters do not give rise to a violation of Article 3 of the Convention.

A situation like the present arises in any case where a prisoner is confined a long way from home. It arises, for example, whenever a prisoner commits a crime in a foreign and distant country. Accordingly, it is submitted that the application be, in this respect, declared manifestly ill-founded.

Conclusions

Accordingly the Government requests the Commission to declare all the applicant's complaints inadmissible, either as being incompatible or, alternatively, as being manifestly ill-founded.

Submissions of the applicant (presented on his behalf by his solicitors on 5 June 1974)

The applicant submits that his detention in England constitutes a violation of Articles 3 and 8 of the Convention. His detention in England is not covered by the provisions of Article 8 (2). It is a principle of international acceptance that a person should be punished and should serve his sentence in the country in which he committed the offence.

The applicant's punishment is inhuman and amounts to a violation of Article 3 of the Convention. He is being detained in a country with which he has no previous connection for crimes which were not committed there. This is, in effect, the inhuman punishment of transportation. The Act under which he was transported is a colonial anachronism and is now no longer valid. In addition to being a violation of Article 8 of the Convention, it is an inhuman punishment to remove a prisoner from all practicable possibility of contact with his family. It is inhuman punishment to put bureaucratic convenience before the fundamental rights of the individual.

The Bahamas are now independent, yet the United Kingdom authorities have, as yet, made no proposal for the applicant's return to his homeland.

The problems of the Bahamian Government should be solved by them. If it is true that the Bahamas have no suitable place of detention, this is the fault of the local authorities, certainly not the fault of the applicant.

THE LAW

The Commission has examined the facts of the case in the light of Articles 3 and 8 (Art. 3, 8) of the Convention.

The Commission thinks it is important to recall the essential facts. The applicant is a man of violence. In 1968, while serving a prison sentence, he murdered a prison warder in the Bahamas and was sentenced to death. This sentence was later commuted to one of life imprisonment. In view of the non-existence of a suitable maximum security prison in the Bahamas he was transferred to a prison in England by virtue of an order made under the Colonial Prisoners Removal Act of 1884; at the time the Bahamas was a British Colony and only became independent in July 1973.

There appears to be no dispute as to the fact that the applicant is now suffering from mental illness and that it is essential for him to be

kept and treated in a special institution of high security.

The essence of the applicant's case is that he has a right to be kept in the Bahamas.

The Commission has stated on many previous occasions that a prisoner has no right, as such, under the Convention to choose the place of his confinement. Nevertheless, it is obvious, that while a prisoner may not have the right to choose where, in a particular country, he wishes to be confined, the movement of a prisoner from one country to another raises more complicated issues. This is particularly so when he is moved 3,000 miles from his home country and it becomes quite impossible for him to receive visits from his family or from anyone with whom he was formerly acquainted.

The case is also complicated by the fact that the complaint can only be considered in so far as it relates to the United Kingdom. The applicant cannot complain to the Commission about the conduct of the Bahamian authorities (and he has not attempted to do this). The Bahamas do not now fall within the Commission's jurisdiction. They were formerly included in the British declaration under Article 62 (Art. 62) of the Convention but they are now independent and, in any case, no declaration under Article 25 (Art. 25) has ever been made by the respondent Government in respect of the Bahamas.

Furthermore, the applicant cannot complain about his original transfer to the United Kingdom; because such complaint would be inadmissible under the six months' rule. He can only validly complain about his continued detention in England.

The Commission has first examined the facts in the light of Article 8 (1) (Art. 8-1) of the Convention which secures (inter alia) "respect for .... family life". It is true that there is a prima facie interference with the applicant's family life, as there is in the case of many prisoners, and it is also true that this interference goes beyond what would normally be accepted in the case of an ordinary detainee. Nevertheless, the Commission considers that the facts fall within the permitted exception in Article 8 (2) (Art. 8-2). The interference with the applicant's family life "is necessary in a democratic society ... for the prevention of disorder or crime [and] for the protection of the rights and freedoms of others". The applicant's is an exceptional case. There appears to be no dispute that if the applicant were to be detained in the Bahamas it would be necessary to construct a special place of detention for him, because there is now no prison or hospital there where he could be held. The question becomes one of balance and reasonableness. There is no suggestion that the applicant's family life has been interfered with merely because of administrative convenience. He has been moved to, and kept in, a place far from his home because there is no place near to his home where he can be kept in reasonable security.

The Commission has next examined the case in the light of Article 3 which secures that "no one shall be subjected to ... inhuman ... punishment". The applicant is a violent killer originally sentenced to death and it was only after his death sentence was commuted that it was decided to send him to the United Kingdom. The death sentence itself would not have been contrary to the provisions of the Convention - see Article 2 (Art. 2).

Furthermore, it is agreed that the applicant is suffering from severe mental illness and that he is now detained in an institution which is designed to cater for mentally unbalanced criminals. It may on balance be less inhuman to keep him in D. (albeit that it is 3,000 miles from his home) than it would be to keep him in unsuitable confinement in the Bahamas. There is no suggestion that the conditions of his detention in D. otherwise amount in any way to ill-treatment under Article 3 (Art. 3), and, indeed, they are presumably more favourable for him than

the conditions of normal prison life.

An examination by the Commission of these complaints as they have been submitted, including an examination made ex officio, does not therefore disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in Article 3 and 8 (Art. 3, 8).

It follows that 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 THIS APPLICATION INADMISSIBLE