In the case of Singh v. the United Kingdom (1),

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr F. Gölcüklü,
Mr R. Macdonald,
Mr A. Spielmann,
Mr N. Valticos,
Mrs E. Palm,
Mr F. Bigi,
Sir John Freeland,
Mr P. Jambrek,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 28 September 1995 and 26 January 1996,

Delivers the following judgment, which was adopted on the last-mentioned date:

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Notes by the Registrar

1. The case is numbered 56/1994/503/585. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

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PROCEDURE

1. The case was referred to the Court on 8 December 1994 by the European Commission of Human Rights ("the Commission") and on 23 December 1994 by the Government of the United Kingdom of Great Britain and Northern Ireland ("the Government"), within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 23389/94) against the United Kingdom lodged with the Commission under Article 25 (art. 25) on 25 January 1994 by a British citizen, Mr Prem Singh.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (art. 48). The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its

obligations under Article 5 para. 4 (art. 5-4) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The President of the Court decided that in the interests of the proper administration of justice this case and the case of Hussain v. the United Kingdom (no. 55/1994/502/584) should be heard by the same Chamber (Rule 21 para. 6) and that a joint hearing should be held.

The Chamber to be constituted included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 27 January 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr R. Macdonald, Mr A. Spielmann, Mr N. Valticos, Mrs E. Palm, Mr F. Bigi and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 13 April 1995 and the applicant's memorial on 3 May. The Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 September 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr I. Christie, Foreign and Commonwealth Office, Agent,
Mr D. Pannick QC,
Mr M. Shaw, Barrister-at-Law, Counsel,
Mr H. Carter,
Mr H. Bayne,
Mr R. Harrington, Home Office, Advisers;

(b) for the Commission

Mr N. Bratza, Delegate;

(c) for the applicant

Mr E. Fitzgerald QC,
Mr J. Cooper, Barrister-at-Law, Counsel,
Mr R. King, Solicitor.

The Court heard addresses by Mr Bratza, Mr Fitzgerald and Mr Pannick.

AS TO THE FACTS

I. Circumstances of the case

6. Mr Prem Singh was born in 1957 and is currently resident in Wakefield, West Yorkshire.

7. On 19 February 1973, the applicant - then aged 15 - was convicted at Leeds Crown Court of the murder of a 72-year-old woman. He had broken into her home, strangled her, cut her throat and had sexual intercourse with her at around the time of her death. Mr Singh received a mandatory sentence of detention "during Her Majesty's pleasure" pursuant to section 53 (1) of the Children and Young Persons Act 1933 (as amended) (see paragraph 29 below). Its effect was to render the applicant "liable to be detained in such a place and under such conditions as the Secretary of State [for the Home Department] may direct".

8. In October 1990, having served the punitive part of his sentence ("tariff" - see paragraph 33 below), Mr Singh was released on licence.

9. On 11 March 1991 the applicant was arrested and interviewed at Southmead police station, Bristol, in connection with a number of alleged offences involving deception, and one of using threatening behaviour. He denied the allegations.

10. On 12 March 1991 the Parole Board considered Mr Singh's case, and on 21 March 1991 his life licence was revoked by the Secretary of State on its recommendation.

On 21 March 1991 the applicant received a formal notice of the reasons for this decision, which he was entitled to by virtue of section 62 (3) of the Criminal Justice Act 1967 (see paragraph 43 below). It informed him that the Secretary of State had revoked his licence in the light of:

> "(i) Reports indicating that you had lied to and misled your supervising officers and avoided telling them of a variety of significant events following your release on licence.
>
> (ii) Your arrest and subsequent appearances before Bristol Magistrates on several criminal charges including fraud and using threatening behaviour, set against the circumstances surrounding the offence for which you were given a life sentence in 1973, make it impossible for the Secretary of State to be satisfied that your continued presence in the community did not constitute a risk to the public."

11. On 27 August 1991, having complained to the Avon Probation Service about its recommendation, Mr Singh received a more detailed explanation of his recall in a letter from the chief probation officer. The reason given for his recall was not the alleged offences (which were a matter for the court), but rather his failure to provide accurate information about his circumstances to his supervising probation officer. The letter cited specifically his failure to inform her about the purchase of a motor vehicle; getting a job and giving false information to his employers about his age and character; having a relationship and not telling his girlfriend all about his background; and falling into arrears with his rent.

12. Mr Singh denied the accuracy of most of these allegations, and asked the Parole Board to review the merits of the revocation of his licence. Under section 62 (4) of the Criminal Justice Act 1967 (now section 39 (4) of the Criminal Justice Act 1991 - see paragraph 43 below), the Parole Board was empowered at this stage to take a binding decision for Mr Singh's immediate release.

13. The Parole Board considered the applicant's case on 27 August and 19 December 1991. It had before it a number of reports from the probation service and the police, none of which was disclosed to the applicant. On 19 December 1991 the Board decided against recommending Mr Singh's immediate release. He was not told the reasons for this decision.

14. On 2 March 1992 the criminal charges against Mr Singh (see paragraph 9 above) were dismissed because the prosecution had presented the indictment out of time.

Mr Singh asked for his case to be reconsidered in the light of this development, and the Secretary of State accordingly referred it back to the Parole Board, under the procedure set out in section 61 (1) of the Criminal Justice Act 1967 (see paragraph 34 below). On 30 July 1992 the Board again declined to recommend Mr Singh's release.

15. The applicant then sought judicial review (see paragraph 47 below) of the two decisions of the Parole Board of 19 December 1991 and 30 July 1992.

On 20 April 1993 the Divisional Court quashed the Parole Board's decision of 19 December 1991 on the ground that there had been a breach of natural justice because of the Board's failure to disclose to Mr Singh all the reports before it. The court held that the applicant was entitled to a fresh consideration by the Parole Board under the terms of section 39 (4) of the Criminal Justice Act 1991, at which the Board would be empowered to order (not merely to recommend) his release (see paragraph 43 below). Lord Justice Evans found, inter alia, that:

> "[Mr Singh's] status is that of a person whose continued detention can only be justified if the test of dangerousness, meaning an unacceptable risk of physical danger to the life or limb of the public, is satisfied" (R. v. Secretary of State for the Home Department, ex parte Prem Singh, unreported, transcript pp. 26F-27B)

He further commented that the disclosed facts "scarcely seem able to support a positive answer to [this question]".

16. As a result of the Divisional Court's decision, Mr Singh received a complete file of the documents which were before the Parole Board. This included a number of detailed probation reports alleging deception of his supervising officers by Mr Singh, and also several hundred pages of witness statements obtained by the police in connection with the criminal charges which had been dismissed (see paragraphs 9 and 14 above).

17. With the help of his solicitor, Mr Singh made written representations to the Parole Board. He denied the allegations contained in the letter from the chief probation officer that he had deceived his supervising probation officer (see paragraph 11 above) and supported his case with witness statements from his

girlfriend and landlady.

18. On 18 June 1993 the Parole Board considered Mr Singh's case. He was not permitted to be present at the review and had no opportunity to give oral evidence or to question those who had made allegations against him.

The Board decided not to recommend release, and gave the following reasons:

> "The Panel accepted that Mr Singh's representations answered some matters which were of concern to his probation officer. However, there was a lack of openness in his dealings with the Probation Service. The Panel also considered that the conduct which led to the criminal charges indicated a serious kind of deceptiveness. His behaviour under supervision led the Panel to conclude that the nature of his personality and behaviour had not changed significantly since the original offence at the age of 15. His failure to comply with the discipline of licence supervision, bearing in mind the original offence, gives rise to considerable concern."

19. Mr Singh applied for judicial review of this decision, but he withdrew his application on or about 7 March 1994 because he had been offered an early review of his case by the Parole Board.

20. In June 1994 the Parole Board reconsidered Mr Singh's case in accordance with section 35 (2) of the Criminal Justice Act 1991 (see paragraph 35 below). Mr Singh entered detailed representations and the file before the Board was disclosed to him; it contained recent reports from probation officers, from a psychologist working with Mr Singh and from the Local Review Committee (see paragraph 46 below). All the reports which made a specific recommendation were in favour of the applicant's release as soon as possible via a pre-release hostel.

21. As the applicant was informed on 21 July 1994 the Parole Board unanimously recommended his release subject to six months in a pre-release employment scheme. The reasons given were as follows:

> "On the evidence presented to [the panel], they considered Prem Singh no longer constituted a danger to life or limb of committing further life threatening offences to justify his continued detention since his recall in March 1991."

22. The applicant was also informed on 21 July 1994 that the Secretary of State was "not prepared to accept this recommendation and [did not agree] to [the applicant's] release". The Secretary of State so decided in exercise of his statutory powers (see paragraph 43 below).

23. By a communication of 8 September 1994 the applicant was given the reasons for the Secretary of State's decision. These were that Mr Singh had misled the probation service after his release in October 1990 and had appeared before the magistrates on several criminal charges, although these had subsequently been dismissed on technical grounds. Thus, he had been recalled to prison "following serious breaches of the trust placed in [him]

as a life licensee". The Secretary of State was unable to assess accurately whether he was still a threat to the public, because he had spent the three and a quarter years since his recall in a closed prison. He considered that Mr Singh's relationship with the probation service needed to be tested in the "more challenging environment of an open prison". For these reasons, he believed that Mr Singh should be transferred to an open prison for further testing. His next formal review by the Parole Board would begin in October 1995.

24. Mr Singh applied for judicial review of the Secretary of State's decision.

On 16 March 1995 the Divisional Court quashed the Secretary of State's decision and ordered him to reconsider it. The court found, inter alia, that the correct test to be applied was whether Mr Singh constituted a danger to the "life or limb" of the public, and that the reasoning process of the Secretary of State had been flawed because he had not properly explained how the findings he had made related to the test of dangerousness (R. v. Secretary of State for the Home Department, ex parte Prem Singh (no. 2), unreported).

25. In September 1995 Mr Singh joined a pre-release employment scheme. His provisional date for release is 18 March 1996.

II. Relevant domestic law and practice

A. Categorisation of detention in the case of murderers

26. A person who unlawfully kills another with intent to kill or cause grievous bodily harm is guilty of murder. English law imposes a mandatory sentence for the offence of murder: "detention during Her Majesty's pleasure" if the offender is under the age of 18 (section 53 (1) of the Children and Young Persons Act 1933 (as amended) - see paragraph 29 below); "custody for life" if the offender is between 18 and 20 years old (section 8 (1) of the Criminal Justice Act 1982); and "life imprisonment" for an offender aged 21 or over (section 1 (1) of the Murder (Abolition of Death Penalty) Act 1965).

Mandatory life sentences are fixed by law in contrast to discretionary life sentences, which can be imposed at the discretion of the trial judge on persons convicted of certain violent or sexual offences (for example manslaughter, rape, robbery). The principles underlying the passing of a discretionary life sentence are:

(i) that the offence is grave and

(ii) that there are exceptional circumstances which demonstrate that the offender is a danger to the public and that it is not possible to say when that danger will subside.

Discretionary life sentences are indeterminate so that "the prisoner's progress may be monitored ... so that he will be kept in custody only so long as public safety may be jeopardised by his being let loose at large" (R. v. Wilkinson [1983] 5 Criminal Appeal Reports 105, 108).

B. Detention during Her Majesty's pleasure

27. The notion of detention during Her Majesty's pleasure has its origins in statutory form in an Act of 1800 for "the safe custody of insane persons charged with offences" (Criminal Lunatics Act), which provided that defendants acquitted of a charge of murder, treason or felony on the grounds of insanity at the time of the offence were to be detained in "strict custody until His Majesty's pleasure shall be known" and described their custody as being "during His [Majesty's] pleasure".

28. In 1908, detention during His Majesty's pleasure was introduced in respect of offenders aged between 10 and 16. It was extended to cover those under the age of 18 at the time of conviction (1933) and further extended to cover persons under the age of 18 at the time when the offence was committed (1948).

29. The provision in force at present is section 53 (1) of the Children and Young Persons Act 1933 (as amended) ("the 1933 Act") which provides:

> "A person convicted of an offence who appears to the court to have been under the age of eighteen years at the time the offence was committed shall not, if he is convicted of murder, be sentenced to imprisonment for life, nor shall sentence of death be pronounced on or recorded against any such person; but in lieu thereof the court shall ... sentence him to be detained during Her Majesty's pleasure and, if so sentenced he shall be liable to be detained in such a place and under such conditions as the Secretary of State may direct."

30. In the case of R. v. Secretary of State for the Home Department, ex parte Prem Singh (20 April 1993, cited above at paragraph 15) Lord Justice Evans in the Divisional Court held as follows in respect of detention "during Her Majesty's pleasure":

> "At the time of sentencing, the detention orders under section 53 were mandatory. It is indeed the statutory equivalent for young persons of the mandatory life sentence for murder. But the sentence itself is closer in substance to the discretionary sentence of which part is punitive (retribution and deterrence) and the balance justified only by the interests of public safety when the test of dangerousness is satisfied. The fact that the mandatory life prisoner may be given similar rights as regards release on licence does not alter the fact that the mandatory life sentence is justifiable as punishment for the whole of its period: see R. v. Secretary of State Ex. p. Doody & Others [1993] Q.B. 157 and Wynne v. UK (E.C.H.R. 1st December 1992). The order for detention under section 53 is by its terms both discretionary and indeterminate: it provides for detention 'during Her Majesty's pleasure' ... I would decide the present case on the narrow ground that, notwithstanding Home Office and Parole Board practice, the applicant should be regarded as equivalent to a discretionary life prisoner for the purpose of deciding whether Wilson rather than Payne governs his case."
>
> (transcript, pp. 24C-25B)

The court accordingly held that the applicant should be afforded the same opportunity as would be given to a

discretionary life prisoner to see the material before the Parole Board when it decided whether he should be released after his recall to prison on revocation of his licence.

The Parole Board has changed its policy accordingly.

31. However, in a statement in Parliament made on 27 July 1993 (see paragraph 38 below), the Secretary of State, Mr Michael Howard, explained that he included in the category of "mandatory life sentence prisoners" those

> "persons who are, or will be, detained during Her Majesty's pleasure under section 53 (1) of the Children and Young Persons Act 1933 ..."

32. In R. v. Secretary of State for the Home Department, ex parte T. and Others [1994] Queen's Bench 378, 390D, Lord Justice Kennedy in the Divisional Court (with whom Mr Justice Pill agreed) said:

> "I see no reason to regard him as having any special status because he was sentenced to detention [during Her Majesty's pleasure] rather than to life imprisonment, despite what was said by Evans LJ when giving judgment in Reg. v. Parole Board, ex parte Singh (Prem) (20 April 1993, unreported). The issues in that case were very different from those with which we are concerned. If Hickey had not been sent to hospital he could hope to benefit from the provisions of section 35 (2) of the 1991 Act [on mandatory life prisoners] ... It will be recalled that in Hickey's case the offence was murder, so the sentence was mandatory not discretionary."

On appeal the Court of Appeal stated that in respect of a person sentenced to detention during Her Majesty's pleasure under section 53 (1) of the 1933 Act for the offence of murder, the relevant provisions on release were those in section 35 (2) of the Criminal Justice Act 1991 (see paragraph 35 below), and not those relating to a discretionary life prisoner (R. v. Secretary of State for the Home Department, ex parte Hickey [1995] 1 All England Law Reports 479, 488).

C. Release on licence

33. Persons sentenced to mandatory and discretionary life imprisonment, custody for life and those detained during Her Majesty's pleasure have a "tariff" set in relation to that period of imprisonment they should serve to satisfy the requirements of retribution and deterrence. After the expiry of the tariff, the prisoner becomes eligible for release on licence. Applicable provisions and practice in respect of the fixing of the tariff and release on licence have been subject to change in recent years, in particular following the coming into force on 1 October 1992 of the Criminal Justice Act 1991 ("the 1991 Act").

1. General procedure

34. Section 61 (1) of the Criminal Justice Act 1967 ("the 1967 Act") provided, inter alia, that the Secretary of State, on the recommendation of the Parole Board and after consultation with the Lord Chief Justice and the trial judge, may "release on licence a person serving a sentence of imprisonment for life or

custody for life or a person detained under section 53 of the Children and Young Persons Act 1933". In this respect no difference was made between discretionary and mandatory life prisoners.

35. By virtue of section 35 (2) of the 1991 Act, persons detained during Her Majesty's pleasure and those life prisoners who are not discretionary life prisoners (see paragraph 26 above), may be released on licence by the Secretary of State, if recommended to do so by the Parole Board and after consultation with the Lord Chief Justice and the trial judge. The decision on whether to release still lies, therefore, with the Secretary of State.

36. The Secretary of State also decides the length of a prisoner's tariff. Subsequently to a House of Lords judgment of 24 June 1993 (R. v. Secretary of State for the Home Department, ex parte Doody [1994] 1 Appeal Cases 531, 567G), the view of the trial judge is made known to the prisoner after his trial as is the opinion of the Lord Chief Justice. The prisoner is afforded the opportunity to make representations to the Secretary of State who then proceeds to fix the tariff. Where the Secretary of State decides to depart from the judicial recommendation he is obliged to give reasons. As a matter of practice the prisoner is informed of the Secretary of State's final decision.

In the second, post-punitive phase of detention the prisoner knows that "the penal consequence of his crime has been exhausted" (ibid., 557A).

37. A statement of policy issued by Sir Leon Brittan, then Secretary of State for the Home Department, on 13 November 1983 indicated that release on licence following expiry of the tariff depended on whether the person was considered no longer to pose a risk to the public.

38. On 27 July 1993, the Secretary of State, Mr Michael Howard, made a statement of policy in relation to mandatory life prisoners, stating, inter alia, that before any such prisoner is released on licence he

> "will consider not only, (a) whether the period served by the prisoner is adequate to satisfy the requirements of retribution and deterrence and, (b) whether it is safe to release the prisoner, but also (c) the public acceptability of early release. This means that I will only exercise my discretion to release if I am satisfied that to do so will not threaten the maintenance of public confidence in the system of criminal justice".

39. In a number of recent court cases involving persons detained during Her Majesty's pleasure, it has been stated that the correct test for post-tariff detention was to be whether the offender continued to constitute a danger to the public (R. v. Secretary of State for the Home Department, ex parte Cox, 3 September 1991; R. v. Secretary of State for the Home Department, ex parte Prem Singh, 20 April 1993 - cited above at paragraph 15; R. v. Secretary of State for the Home Department, ex parte Prem Singh (no. 2), 16 March 1995).

2. Procedure applicable to discretionary life prisoners

40. The 1991 Act instituted changes to the regime applying to

the release of discretionary life prisoners following the decision of the European Court of Human Rights in the case of Thynne, Wilson and Gunnell v. the United Kingdom (judgment of 25 October 1990, Series A no. 190-A).

41. Pursuant to section 34 of the 1991 Act, the tariff of a discretionary life prisoner is now fixed in open court by the trial judge after conviction. After the tariff has expired, the prisoner may require the Secretary of State to refer his case to the Parole Board which has the power to order his release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

Pursuant to the Parole Board Rules 1992 which came into force on 1 October 1992, a prisoner is entitled to an oral hearing, to disclosure of all evidence before the panel (see paragraph 45 below) and to legal representation. There is provision enabling a prisoner to apply to call witnesses on his behalf and to cross-examine those who have written reports about him.

42. For the purposes of the 1991 Act, persons detained during Her Majesty's pleasure are not regarded as discretionary life prisoners (section 43 (2)).

D. Revocation of licences

43. Recall to prison of a person released on licence was governed by section 62 of the 1967 Act which reads:

> "(1) Where the Parole Board recommends the recall of any person who is subject to a licence under section 60 or 61 of this Act, the Secretary of State may revoke that person's licence and recall him to prison.
>
> (2) The Secretary of State may revoke the licence of any such person and recall him as aforesaid without consulting the Board, where it appears to him that it is expedient in the public interest to recall that person before such consultation is practicable.
>
> (3) A person recalled to prison under the foregoing provisions of this section may make representations ...
>
> (4) The Secretary of State shall refer to the Board the case of a person recalled under subsection (1) of this section who makes representations under the last foregoing subsection and shall in any event so refer the case of a person returned to prison after being recalled under subsection (2) of this section.
>
> (5) Where the Board recommends the immediate release on licence of a person whose case is referred to it under this section, the Secretary of State shall give effect to the recommendation ...
>
> ..."

44. Section 39 of the 1991 Act has added that a person recalled to prison shall be informed of the reasons for his recall and of his right to make representations in writing.

E. Parole Board and Local Review Committees

45. Section 59 of the 1967 Act set out the constitution and functions of the Parole Board:

> "(1) For the purposes of exercising the function conferred on it by this Part of this Act as respects England and Wales there shall be a body known as the Parole Board ... consisting of a chairman and not less than four other members appointed by the Secretary of State.
>
> ...
>
> (4) The following provisions shall have effect with respect to the proceedings of the Board on any case referred to it, that is to say -
>
> (a) the Board shall deal with the case on consideration of any documents given to it by the Secretary of State and of any reports it has called for and any information whether oral or in writing that it has obtained; and
>
> (b) if in any particular case the Board thinks it is necessary to interview the persons to whom the case relates before reaching a decision, the Board may request one of its members to interview him and shall take into account the report of that interview by that member ...
>
> (5) The documents to be given by the Secretary of State to the Board under the last foregoing subsection shall include -
>
> (a) where the case referred to the Board is one of release under section 60 or 61 of this Act, any written representations made by the person to whom the case relates in connection with or since his last interview in accordance with rules under the next following subsection;
>
> (b) where the case so referred relates to a person recalled under section 62 of this Act, any written representations made under that section."

As to the constitution of the Parole Board, Schedule 2 to the 1967 Act further provides:

> "1. The Parole Board shall include among its members -
>
> (a) a person who holds or has held judicial office;
>
> (b) a registered medical practitioner who is a psychiatrist;
>
> (c) a person appearing to the Secretary of State to have knowledge and experience of the supervision or after care of discharged prisoners;
>
> (d) a person appearing to the Secretary of State to have made a study of the causes of delinquency or the treatment of offenders."

The Parole Board always counts among its members three High Court judges, three circuit judges and a recorder. Cases referred to the Board may be dealt with by three or more members of the Board (Parole Board Rules 1967). In practice, the Board sits in small panels, including, in the case of life prisoners, a High Court judge and a psychiatrist. The judges on the Board are appointed by the Home Secretary (section 59 (1) of the 1967 Act) after consultation with the Lord Chief Justice.

With the exception of the new rules concerning discretionary life prisoners, similar provisions apply under the 1991 Act.

46. Under section 59 (6) of the 1967 Act the Secretary of State established for every prison a Local Review Committee with the function of advising him on the suitability for release on licence of prisoners. It was the practice to obtain this assessment before referring a case to the Parole Board. Before the Local Review Committee reviewed a case, a member of the committee would interview the prisoner if he was willing to be interviewed.

The first review by the Local Review Committee was normally fixed to take place three years before the expiry of the tariff.

Local Review Committees were abolished by the Parole Board Rules 1992. The prisoner is now interviewed by a member of the Parole Board.

F. Judicial review

47. Persons serving a sentence of detention during Her Majesty's pleasure may institute proceedings in the High Court to obtain judicial review of any decision of the Parole Board or of the Secretary of State if those decisions are taken in breach of the relevant statutory requirements or if they are otherwise tainted by illegality, irrationality or procedural impropriety (Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 All England Law Reports 935, 950-51).

PROCEEDINGS BEFORE THE COMMISSION

48. Mr Singh applied to the Commission on 25 January 1994. He relied on Article 5 para. 4 (art. 5-4) of the Convention, complaining that he should be entitled to have the lawfulness of his continued detention determined by a court and that the Parole Board in its powers and procedures failed to offer the requisite safeguards.

49. The Commission declared the application (no. 23389/94) admissible on 30 June 1994. In its report of 11 October 1994 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 5 para. 4 (art. 5-4) of the Convention.

The full text of the Commission's opinion is reproduced as an annex to this judgment (1).

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Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and

Decisions - 1996), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS MADE TO THE COURT

50. At the hearing, the Agent of the Government invited the Court to conclude that, in the present case, there had been no breach of the Convention.

The applicant, for his part, asked the Court to uphold his complaints and declare that his rights under Article 5 para. 4 (art. 5-4) had been violated, both by the denial of a review by a court-like body and by the denial at any time of an oral hearing at which he could have put his case for release in person.

AS TO THE LAW

I. SCOPE OF THE CASE

51. In his memorial to the Court and at the hearing the applicant complained of the secretive and unfair manner in which his tariff (see paragraph 33 above) had been established.

52. The Court notes that this particular complaint was not dealt with by the Commission in its report or admissibility decision and that, as pointed out by the Delegate of the Commission, it is uncertain whether it can be regarded as falling within the compass of the case before the Court as delimited by the Commission's decision on admissibility (see, inter alia, the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 13, para. 29).

In any event, given the fact that the applicant's punitive period has now expired, the Court does not consider it necessary to examine this complaint.

The scope of the case before the Court is therefore confined to the issues under Article 5 para. 4 (art. 5-4) raised in connection with the applicant's current situation, that is post-tariff detention.

II. ALLEGED VIOLATION OF ARTICLE 5 PARA. 4 (art. 5-4) OF THE CONVENTION

53. Mr Singh complained that he had not been able either on his recall to prison in 1991 or at reasonable intervals thereafter to have the case of his continued detention during Her Majesty's pleasure (see paragraph 26 above) heard by a court. He invoked Article 5 para. 4 (art. 5-4) of the Convention which provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

54. The Court will first examine whether, having regard to the particular features of detention during Her Majesty's pleasure, the requirements of Article 5 para. 4 (art. 5-4) are satisfied by the original trial and appeal proceedings or, on the

contrary, whether that provision confers an additional right to challenge the lawfulness of the continued detention before a court.

A. Whether the requisite judicial control was incorporated in the original conviction

55. In the applicant's submission, a sentence of detention during Her Majesty's pleasure differed from the mandatory life sentence imposed on adults (see paragraph 26 above), which the Court examined in its Wynne v. the United Kingdom judgment of 18 July 1994 (Series A no. 294-A), in that the former is not solely based on the gravity of the offence but takes into account the age of the offender. The principle that crimes committed by young persons should not be punished as severely as the crimes of adults is, in the applicant's submission, contained in all civilised penal codes. In this respect, the purpose of a sentence of detention during Her Majesty's pleasure is not wholly punitive in character but partly punitive and partly preventive.

In support of his argument the applicant referred to the historical origins of the expression "during Her Majesty's pleasure" (the Criminal Lunatics Act 1800 and the Children's Act 1908 - see paragraphs 27 and 29 above) in which context it had a clear preventive purpose. He further referred to the wording of section 53 of the 1933 Act ("a person [under 18] ... shall not, if ... convicted of murder, be sentenced to imprisonment for life" - see paragraph 29 above) and to the indeterminacy of the very formula used in the sentence ("during Her Majesty's pleasure").

In view of the above, the applicant concluded that a sentence of detention under section 53 was closer in its indeterminacy and preventive objectives to a discretionary life sentence, as examined by the Court in the case of Thynne, Wilson and Gunnell cited above than to a mandatory life sentence. As in that case, after the tariff has expired, the only legitimate basis for the applicant's continued detention would be a finding of his continued dangerousness, a characteristic susceptible to change with the passage of time (ibid., p. 30, para. 76). This was particularly so in the case of offenders who could be as young as ten at the time of the commission of the offence. It follows that at that phase in the execution of his sentence, the applicant was entitled under Article 5 para. 4 (art. 5-4) to have the lawfulness of his continued detention and of any re-detention determined by a court at reasonable intervals.

56. The Commission agreed in substance with the applicant's submissions and added that the absence of the word "life" in the sentence reinforced its indeterminate character.

57. The Government, for their part, contended that the sentence of detention during Her Majesty's pleasure has an essentially punitive character and is imposed automatically on all juvenile murderers on the strength of the gravity of their offence, regardless of their mental state or dangerousness. This explains why under the Criminal Justice Act 1991 the same release procedures govern both mandatory life sentences passed on adults and sentences of detention during Her Majesty's pleasure and why the same administrative policies are applied to both (see paragraphs 31 and 35 above). Furthermore, after the tariff period has elapsed, not only the prisoner's dangerousness but also the acceptability to the public of his early release must

be considered with a view to maintaining public confidence in the system of criminal justice (see paragraph 38 above).

It was further contended that, apart from the fact that persons sentenced to detention during Her Majesty's pleasure would not be detained in a prison during the early stages of their detention but in a special institution for young offenders, the sentence was nothing more than the statutory equivalent for young persons of the mandatory life sentence for adults. In these circumstances, the issues in the present case were practically identical to those in the Wynne case (cited above at paragraph 55) where the Court found that the original trial and appeal proceedings satisfied the requirements of Article 5 para. 4 (art. 5-4) of the Convention.

58. The Court notes at the outset that, as has been commonly accepted, the central issue in the present case is whether detention during Her Majesty's pleasure, given its nature and purpose, should be assimilated, under the case-law on the Convention, to a mandatory sentence of life imprisonment or rather to a discretionary sentence of life imprisonment. In dealing with this issue the Court must therefore decide whether the substance of a sentence of detention under section 53 is more closely related to that at the heart of the cases of Weeks v. the United Kingdom (judgment of 2 March 1987, Series A no. 114) and Thynne, Wilson and Gunnell (cited above at paragraph 40) or to that in the more recent Wynne case (cited at paragraph 55).

59. It is true, as submitted by the Government, that a sentence of detention during Her Majesty's pleasure is mandatory: it is fixed by law and is imposed automatically in all cases where persons under the age of 18 are convicted of murder, the trial judge having no discretion. It is also the case that the 1991 Act as well as recent policy statements treat the sentence at issue in the present case in an identical manner to mandatory life sentences as regards proceedings for release on licence and recall (see paragraphs 31 and 35 above).

On the other hand, it is undisputed that, in its statutory origins, the expression "during Her Majesty's pleasure" had a clearly preventive purpose and that - unlike sentences of life custody or life imprisonment - the word "life" is not mentioned in the description of the sentence.

60. Nevertheless, important as these arguments may be for the understanding of the sentence of detention under section 53 in English law, the decisive issue in the present context is whether the nature and, above all, the purpose of that sentence are such as to require the lawfulness of the continued detention to be examined by a court satisfying the requirements of Article 5 para. 4 (art. 5-4).

61. It is recalled that the applicant was sentenced to be detained during Her Majesty's pleasure because of his young age at the time of the commission of the offence. In the case of young persons convicted of serious crimes, the corresponding sentence undoubtedly contains a punitive element and accordingly a tariff is set to reflect the requirements of retribution and deterrence. However, an indeterminate term of detention for a convicted young person, which may be as long as that person's life, can only be justified by considerations based on the need to protect the public.

These considerations, centred on an assessment of the young offender's character and mental state and of his or her resulting dangerousness to society, must of necessity take into account any developments in the young offender's personality and attitude as he or she grows older. A failure to have regard to the changes that inevitably occur with maturation would mean that young persons detained under section 53 would be treated as having forfeited their liberty for the rest of their lives, a situation which, as the applicant and the Delegate of the Commission pointed out, might give rise to questions under Article 3 (art. 3) of the Convention.

62. Against this background the Court concludes that the applicant's sentence, after the expiration of his tariff, is more comparable to a discretionary life sentence. This was, albeit in a different context, the view expressed by the Divisional Court in its judgment of 20 April 1993 (R. v. Secretary of State for the Home Department, ex parte Prem Singh - see paragraphs 15 and 30 above).

The decisive ground for the applicant's continued detention was and continues to be his dangerousness to society, as the Divisional Court restated on 16 March 1995 (R. v. Secretary of State for the Home Department, ex parte Prem Singh (no. 2) - see paragraph 24 above), a characteristic susceptible to change with the passage of time. Accordingly, new issues of lawfulness may arise in the course of detention and the applicant is entitled under Article 5 para. 4 (art. 5-4) to take proceedings to have these issues decided by a court at reasonable intervals as well as to have the lawfulness of any re-detention determined by a court (see, mutatis mutandis, the above-mentioned Thynne, Wilson and Gunnell judgment, p. 30, para. 76).

B. Whether the available remedies satisfied the requirements of Article 5 para. 4 (art. 5-4)

63. The Government accepted that if, contrary to their submissions, Article 5 para. 4 (art. 5-4) did confer additional rights to challenge the lawfulness of the applicant's continued detention, there would have been a breach of that provision but only to the extent that the Parole Board had no general power to order the release of the applicant after the expiry of his tariff.

In reply to the applicant's submission that the importance and the nature of the issue, that is the detainee's mental state, called for an oral hearing, including the possibility of calling and questioning witnesses, the Government recalled that Article 5 para. 4 (art. 5-4) does not confer an absolute right to an adversarial procedure and that to the extent that fairness did require an oral hearing, this could be secured by bringing judicial review proceedings.

64. The Commission found that the Parole Board's lack of decision-making power meant that it could not be regarded as a body satisfying the requirements of Article 5 para. 4 (art. 5-4). As to the need for an oral hearing, the Delegate of the Commission added that judicial review "is a very uncertain remedy given the fact that express provision is made for an oral hearing in the case of discretionary life prisoners, but not in the case of persons detained during Her Majesty's pleasure".

65. The Court recalls that Article 5 para. 4 (art. 5-4) does

not guarantee a right to judicial control of such scope as to empower the "court" on all aspects of the case, including questions of expediency, to substitute its own discretion for that of the decision-making authority; the review should, nevertheless, be wide enough to bear on those conditions which, according to the Convention, are essential for the lawful detention of a person subject to the special type of deprivation of liberty ordered against the applicant (see, inter alia, the above-mentioned Weeks judgment, p. 29, para. 59, the E. v. Norway judgment of 29 August 1990, Series A no. 181-A, p. 21, para. 50, and the above-mentioned Thynne, Wilson and Gunnell judgment, p. 30, para. 79).

66. As in Thynne, Wilson and Gunnell (p. 30, para. 80) and despite the new policy allowing persons detained under section 53 of the 1933 Act the opportunity to see the material before the Parole Board (see paragraphs 15 and 30 above), the Court sees no reason to depart from its findings in the case of Weeks (cited above, pp. 29-33, paras. 60-69) that the Parole Board does not satisfy the requirements of Article 5 para. 4 (art. 5-4). Indeed, to the extent to which the Parole Board cannot order the release of a prisoner this is not contested by the Government. However, the lack of adversarial proceedings before the Parole Board also prevents it from being regarded as a court or court-like body for the purposes of Article 5 para. 4 (art. 5-4).

67. The Court recalls in this context that, in matters of such crucial importance as the deprivation of liberty and where questions arise which involve, for example, an assessment of the applicant's character or mental state, it has held that it may be essential to the fairness of the proceedings that the applicant be present at an oral hearing (see, mutatis mutandis, the Kremzow v. Austria judgment of 21 September 1993, Series A no. 268-B, p. 45, para. 67).

68. The Court is of the view that, in a situation such as that of the applicant, where a substantial term of imprisonment may be at stake and where characteristics pertaining to his personality and level of maturity are of importance in deciding on his dangerousness, Article 5 para. 4 (art. 5-4) requires an oral hearing in the context of an adversarial procedure involving legal representation and the possibility of calling and questioning witnesses.

69. It is not an answer to this requirement that the applicant might have been able to obtain an oral hearing by instituting proceedings for judicial review. In the first place, Article 5 para. 4 (art. 5-4) presupposes the existence of a procedure in conformity with its requirements without the necessity of instituting separate legal proceedings in order to bring it about. In the second place, like the Delegate of the Commission, the Court is not convinced that the applicant's possibility of obtaining an oral hearing by way of proceedings for judicial review is sufficiently certain to be regarded as satisfying the requirements of Article 5 para. 4 (art. 5-4) of the Convention.

C. Recapitulation

70. In conclusion, the Court finds that there has been a violation of Article 5 para. 4 (art. 5-4) of the Convention in that the applicant, after the expiry of his tariff, was unable to bring before a court with the powers and procedural guarantees

satisfying that provision (art. 5-4) the case of his continued detention during Her Majesty's pleasure or of his re-detention following the revocation of his licence.

III. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

71. Article 50 (art. 50) of the Convention provides as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicant's claims under this provision (art. 50) were for compensation for non-pecuniary damage and reimbursement of legal costs and expenses referable to the proceedings before the Convention institutions.

A. Damage

72. The applicant adopted the terms of the claim for compensation in the case of Hussain v. the United Kingdom (judgment of 21 February 1996, Reports of Judgments and Decisions 1996-I, p. 272, para. 65) and, additionally, sought compensation for the "material and moral damages" caused by the Parole Board's failure to recommend his release in the 1991 and 1993 proceedings and by the Secretary of State's denial of the Parole Board's recommendation for release in July 1994. He quantified his claim at £100,000 or, if the Court were only to find a causal link between the violation found and his continued detention as of July 1994, at £25,000.

73. The Court notes that, had the Parole Board's recommendations been binding on the Secretary of State, the applicant would have joined a pre-release employment scheme in July 1994. On the basis of the evidence before it, however, it cannot speculate as to what the applicant's conduct would have been and whether he would have been eventually released. As to the moral damage allegedly suffered, the Court shares the Government's view that, in the circumstances, the finding of a violation constitutes sufficient just satisfaction for the purposes of Article 50 (art. 50).

B. Costs and expenses

74. For the legal costs and expenses in bringing his case before the Convention institutions, the applicant claimed the sum of £22,058.73 inclusive of value added tax.

75. The Government found the sum claimed excessive.

76. In the light of the criteria emerging from its case-law, the Court holds that the applicant should be awarded the amount of £13,000 less 15,421 French francs already paid by way of legal aid in respect of fees and travel and subsistence expenses.

C. Default interest

77. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 5 para. 4 (art. 5-4) of the Convention in that the applicant, after the expiry of his punitive period, was unable to bring before a court the case of his continued detention or of his re-detention following the revocation of his licence;

2. Holds that the present judgment constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained;

3. Holds

(a) that the respondent State is to pay to the applicant, within three months, in respect of legal costs and expenses, £13,000 (thirteen thousand pounds sterling), less 15,421 (fifteen thousand four hundred and twenty-one) French francs already paid by way of legal aid, to be converted into pounds sterling at the rate of exchange applicable on the date of delivery of the present judgment;

(b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 February 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar