



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

**CASE OF X v. THE UNITED KINGDOM**

*(Application no. 7215/75)*

JUDGMENT

STRASBOURG

5 November 1981

**In the case of X v. the United Kingdom,**

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 the Rules of Court, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,  
Mr. M. ZEKIA,  
Mr. D. EVRIGENIS,  
Mr. F. MATSCHER,  
Mr. J. PINHEIRO FARINHA,  
Mr. B. WALSH,  
Mr. R. JENNINGS, *ad hoc judge*,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 23 and 24 June and on 23 and 24 October 1981,

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

**PROCEDURE**

1. The case of X v. the United Kingdom was referred to the Court by the European Commission of Human Rights ("the Commission"). The case originated in an application against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on 14 July 1974 under Article 25 (art. 25) of the Convention by a United Kingdom citizen, referred to as X in this judgment. Contrary to the usual practice, the identity of the applicant, who died in 1979, has not been made public in view of the wish expressed by his next of kin.

2. The Commission's request was filed at the registry on 13 October 1980, within the period of three months laid down by Articles 32 par. 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) of the Convention and to the declaration made by the United Kingdom recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the Commission's request is to obtain a decision from the Court as to whether or not the facts of the case disclose a breach by the respondent State of its obligations under Article 5 par. 1, 2 and 4 (art. 5-1, art. 5-2, art. 5-4) of the Convention.

3. The Chamber of seven judges to be constituted included, as ex officio members, Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr. G. Balladore Pallieri, the President

of the Court (Rule 21 par. 3 (b) of the Rules of Court). On 6 November 1980, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. J. Cremona, Mr. F. Gölcüklü, Mr. E. García de Enterría, Mr. L.-E. Pettiti and Mr. R. Macdonald (Article 43 in fine of the Convention and Rule 21 par. 4) (art. 43).

On 18 November, Sir Vincent Evans withdrew from the consideration of the case pursuant to Rule 24 par. 2. On 16 December, the Government of the United Kingdom ("the Government") appointed as ad hoc judge Mr. R. Y. Jennings, Q. C., Whewell Professor of International Law at the University of Cambridge (Article 43 of the Convention and Rule 23) (art. 43). Subsequently, Mr. J. Cremona, Mr. F. Gölcüklü, Mr. E. García de Enterría, Mr. L.-E. Pettiti and Mr. R. Macdonald were prevented from taking part in the consideration of the case; they were replaced by five substitute judges, Mr. M. Zekia, Mr. D. Evrigenis, Mr. F. Matscher, Mr. J. Pinheiro Farinha and Mr. B. Walsh (Rules 22 par. 1 and 24 par. 1).

4. Mr. Balladore Pallieri assumed the office of President of the Chamber (Rule 21 par. 5). He ascertained, through the Registrar, the views of the Agent of the Government and the Delegate of the Commission regarding the procedure to be followed. On 2 December 1980, he decided that the Agent should have until 3 March 1981 to file a memorial and that the Delegate should be entitled to file a memorial in reply within two months from the date of the transmission of the Government's memorial to him by the Registrar.

Following his death on 9 December 1980, Mr. Balladore Pallieri was replaced as President of the Chamber by Mr. G. Wiarda, then the Vice-President of the Court (Rule 21 par. 3 (b) and 5). On 3 March 1981, the President of the Chamber agreed to extend to 7 April the time-limit granted to the Government; their memorial was received at the registry on 27 March. On 24 April, the Secretary to the Commission advised the Registrar that the Delegate would present his observations at the hearings.

5. After consulting, through the Registrar, the Agent of the Government and the Delegate of the Commission, the President directed on 27 April 1981 that the oral hearings should open on 22 June.

6. The oral hearings were held in public at the Human Rights Building, Strasbourg, on 22 June. Immediately before their opening, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government:

Mrs. A. GLOVER, Legal Adviser,

Foreign and Commonwealth Office, Acting Agent,

Mr. S. BROWN, Barrister-at-Law,

*Counsel,*

Mr. A. COLE, Legal Advisers' Branch, Home Office,

Mr. A. HARDING, Home Office,

Mr. D. PICKUP, Treasury Solicitor's Department,

*Advisers;*

- for the Commission:

Mr. S. TRECHSEL,  
Mr. T. NAPIER, Solicitor,

*Delegate,*

Mr. L. GOSTIN, Legal Director,

MIND (National Association for Mental Health), assisting  
the Delegate (Rule 29 par. 1, second sentence, of the  
Rules of Court).

The Court heard addresses by Mr. Trechsel, Mr. Napier and Mr. Gostin for the Commission, and by Mr. Brown for the Government. Various documents were submitted to the Court by the Delegate of the Commission.

7. On various dates between 10 July and 21 October, the registry received from those assisting the Delegate, from the Government and from the Commission's Secretariat their replies to a request for production of documents and to certain questions put by the Court, and also their comments regarding certain of those replies.

## AS TO THE FACTS

8. The applicant, a United Kingdom citizen born in 1934, died in 1979. At the time of lodging his application with the Commission he was detained in Broadmoor Hospital, a special secure mental hospital for the criminally insane.

His complaints were directed against his recall to Broadmoor Hospital in April 1974, following a three-year period of conditional discharge. He claimed that his recall was unjustified, that he was not promptly given sufficient reasons for his re-detention, and that he had no effective way of challenging the authorities' action.

### **A. The relevant domestic law and practice**

9. In England and Wales the law relating to the confinement of persons of unsound mind, and more particularly the compulsory detention of patients concerned in criminal proceedings, is contained in the Mental Health Act 1959 ("the 1959 Act"). At present, a review of the relevant provisions of the Act is under way.

A "patient" is defined by section 147 par. 1 as "a person suffering or appearing to suffer from mental disorder"; according to section 4 par. 1, "mental disorder" means "mental illness, arrested or incomplete development of mind, psychopathic disorder, any other disorder or disability of mind". The "responsible medical officer" (as referred to in subsequent paragraphs of this judgment) is defined by section 80 par. 1 as being "the medical practitioner in charge of the treatment of the patient".

10. Section 60 par. 1 of the 1959 Act empowers criminal courts to direct where appropriate that a person convicted of an offence shall be dealt with by way of medical treatment rather than by way of punishment, if necessary in a special secure mental hospital for the criminally insane (section 40 of the National Health Service Reorganisation Act 1973). Thus, where a person is convicted before a Crown Court - prior to 1971, a Court of Assize or Quarter Sessions - of an offence other than an offence the sentence for which is fixed by law, the court may, pursuant to section 60 par. 1, by order (hereafter referred to as a "hospital order") authorise his admission to and detention in such hospital as may be specified in the order. The conditions which must be met include the following:

a) the court must be satisfied, on the written or oral evidence of two medical practitioners (at least one of whom has special experience in the diagnosis or treatment of mental disorders), that the offender is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and that the mental disorder is of a nature or degree which warrants the detention of the patient in a hospital for mental treatment;

b) the court must be of the opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of a hospital order.

11. Under section 65 par. 1, where it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public, the court may by further order (hereafter referred to as a "restriction order") direct that the hospital order shall be subject to special restrictions in respect of discharge, either without limit of time or during such a period as may be specified in the order. Before making a restriction order, the court must hear oral evidence from at least one of the medical practitioners mentioned above.

12. Where a restriction order has been made, responsibility for the control of the patient, though not for his treatment, is vested in the Home Secretary.

Thus, the Home Secretary has special powers under section 66 of the 1959 Act in connection with the discharge of restricted patients. If he is satisfied that the restriction order is no longer required for the protection of the public, he may direct that the patient shall cease to be subject to the special restrictions (sub-section 1). While a restriction order is in force, he may, "if he thinks fit", discharge a patient from hospital either absolutely or subject to certain conditions; where he absolutely discharges him the restriction order ceases to have effect (sub-section 2). If the discharge is conditional, the Home Secretary may, at any time during the continuance in

force of the restriction order, by warrant recall the patient to hospital (subsection 3).

13. According to section 66 par. 6 to 8 of the 1959 Act, the Home Secretary may at any time refer to a Mental Health Review Tribunal for their advice the case of a patient who is for the time being subject to a restriction order. The patient himself may not apply directly to such a Tribunal, but he may ask the Home Secretary in writing to do so. Where so asked by a patient who is detained in hospital, the Home Secretary must refer the patient's case to the Tribunal within two months of the receipt of the request unless during that period he discharges the patient absolutely or conditionally. Such requests may only be made at certain specified intervals, namely one year after the date of the relevant hospital order, one year after that and thereafter once every two years. In the case of a patient conditionally discharged and subsequently recalled, application may be made six months after readmission, one year after readmission and thereafter biennially.

14. Mental Health Review Tribunals, set up under section 3 of the 1959 Act, consist of a lawyer, a psychiatrist (independent of the detaining authority who examines the patient) and a third member with suitable qualifications. One of the functions of such a Tribunal is to advise the Home Secretary periodically about the patient's condition (see the preceding paragraph). The Home Secretary takes this advice into consideration, but is not bound by it. He may therefore reject the advice where medical opinion is not unequivocal, there is a conflict with other advice he has received or the interests of public safety so require.

Rule 19 of the Mental Health Review Tribunals Rules provides that a Tribunal shall consider a reference made by the Home Secretary in whatever informal manner they think appropriate, that they may interview the patient and that they shall interview him if he so requests. In practice, a restricted patient may, like any other detained patient, be legally represented or accompanied by members of his family, or both. The dossier of papers supplied to the Tribunal by the Home Office is not generally disclosed to the patient himself and only partially disclosed to the legal representative, if any. In particular, the home circumstances report is never sent to the legal representative and the up-to-date medical report only if the responsible medical officer agrees.

Advice from Mental Health Review Tribunals about restricted patients is regarded as confidential to the Home Secretary. Patients and the representatives are simply told that the Minister's decision has been taken in the light of Tribunal advice.

15. According to the evidence submitted by the Government, there are four ways by which the need for continued detention of a restricted patient may come to be reviewed by the Home Office:

- there may be a recommendation from the medical officer responsible for the patient that the patient should be discharged;
- the patient may ask for his case to be referred to a Mental Health Review Tribunal (see paragraph 13 above);
- the patient may write about his case to a Member of Parliament who brings it to the attention of the Secretary of State;
- the patient himself may write to the Secretary of State asking that he be discharged.

16. The person responsible for initially taking a recalled patient "into custody" will usually be a police officer, but may also be a social worker, a probation officer, a nursing officer or "any person authorised in writing by the managers of the hospital" (see sections 40 par. 1 and 66 par. 3 (b) of the 1959 Act).

At the end of 1980 ministerial circulars issued to the relevant authorities, including the police, the probation service and the special hospitals, announced that "in order to meet criticisms made by the European Commission of Human Rights", a new two-stage procedure for informing recalled patients of the reasons for their re-detention was to be introduced. At the first stage of this procedure, the person taking the patient into custody should inform the patient in simple terms that he is being recalled to hospital on the authority of the Home Secretary pursuant to the provisions of the 1959 Act and that a further explanation will be given later. A detailed account of the reasons for the recall must then be provided to the patient by the medical staff at the hospital where he is to be detained; this is to be done as soon as possible after the patient's admission to hospital and in any event within 72 hours of admission. The responsible medical officer is also required to ensure that the officer who supervised the patient during release and a responsible member of the patient's family (or his legal adviser) are informed of the reasons.

17. Any person who is detained may make an *ex parte*, that is to say, a unilateral, application for a writ of habeas corpus to a Divisional Court of the Queen's Bench Division or, if no such Court is sitting at that time, to a single judge (of the High Court) in court or, if there is none, to such a judge wherever he may be found. Habeas corpus is a common law remedy, developed both by statute and by the courts themselves, by which a person may challenge the legality of his detention. Applications are given priority over other business. The case is considered on the basis of affidavit evidence, as to which cross-examination does not take place in practice. The normal procedure is for applications to be made by counsel; only in exceptional circumstances would a court hear an applicant in person. The judge or the Divisional Court may, where the illegality is clear, order that the writ issue forthwith but more commonly will arrange for the person holding the detainee to be notified of the application and be given an opportunity of appearing before the full court to justify the detention. If at

the hearing the Divisional Court is not satisfied that the detention is lawful, it will issue the writ which will have the effect of procuring the release of the person detained.

There is in this respect no limitation on access to the courts by patients detained under the 1959 Act. According to the Government, such patients may apply at any time for a writ of habeas corpus save that where an application fails a fresh application made on the same grounds but without fresh evidence to support it will not succeed.

18. The scope of review open to the courts in habeas corpus proceedings can be extensive. Under sections 3 and 4 of the Habeas Corpus Act 1816, the courts may inquire into the truth of the facts stated in the return to a writ of habeas corpus where the applicant is confined "otherwise than for some criminal or supposed criminal matter and except persons imprisoned for debt or by process in any civil suit".

19. However, the operation in practice of the remedy of habeas corpus is by no means uniform and the case-law is not free from apparent contradiction. One factor partially explaining the apparently contradictory nature of the case-law is, as the Government pointed out, that the scope of review undertaken by the courts varies according to the context in which the application for a writ is brought. In particular, where the liberty of the subject has been restrained on account of an order made in purported exercise of a discretionary power vested by statute in the executive authorities, the scope of review will to a large extent be governed by the terms of the relevant statute.

In habeas corpus proceedings, in examining an administrative decision to detain, the court will always inquire whether the applicant has been lawfully detained in accordance with the requirements stated in the relevant legislation. Furthermore, even an order for detention that is technically good on its face can be upset, *inter alia*, if the detaining authority misused its powers by acting in bad faith or capriciously or for a wrongful purpose (see *R. v. Governor of Brixton Prison, ex parte Sarno* (1916) 2 King's Bench 742 and *R. v. Brixton Prison (Governor), ex parte Soblen* (1962) 3 All England Law Reports 641), or if the decision to detain is supported by no sufficient evidence or is one which no reasonable person could have reached in the circumstances (see *Shahid Iqbal* (1978) 3 Weekly Law Reports 884 and *Zamir v. Secretary of State* (1980) 2 All England Law Reports 768). Subject to the foregoing, the court will not be able to review the grounds or merits of a decision taken by an administrative authority to the extent that under the legislation in question these are exclusively a matter for determination by that authority.

If the return to the writ on its face shows a valid authority for the detention, it will in effect be for the applicant to establish that the detention is illegal (see *Re Wajid Hassan* (1976) 2 All England Law Reports 123 and *Zamir v. Secretary of State, loc. cit.*).



### **B. The particular circumstances of the case**

20. In 1965 and 1966, the applicant received psychiatric treatment for delusions. He was diagnosed as having a paranoid psychosis.

On 22 October 1968, he appeared at the Sheffield Assizes and pleaded guilty to a charge of wounding with intent to cause grievous bodily harm. The facts before the court were that the applicant had struck a workmate in the mouth with a heavy spanner.

Following his conviction, the court remanded him in custody for medical reports. At the adjourned hearing on 7 November 1968, oral reports were given by two medical practitioners concerning the applicant's mental health; the court made an order under section 60 of the 1959 Act for his admission to and detention in Broadmoor Hospital, a special secure mental hospital for the criminally insane. The court also made a restriction order against the applicant for an indefinite period in accordance with section 65.

21. During X's detention in Broadmoor Hospital, his case was frequently reviewed by the hospital authorities. In January 1970, his case was referred, at his own request, to a Mental Health Review Tribunal. In the light of the Tribunal's advice, the Home Secretary decided not to authorise the applicant's discharge or transfer to another hospital.

However, in January 1971, the responsible medical officer was able to report an improvement in X's condition to the extent that he recommended that X should be conditionally discharged. On 19 May 1971, the Home Secretary ordered the applicant's conditional discharge under section 66 par. 2 of the 1959 Act. The conditions to be observed were that the applicant should reside at the matrimonial home, be under the supervision of a probation officer and attend a psychiatric out-patients' clinic as directed by the responsible medical officer at Broadmoor Hospital.

22. Throughout the time of his conditional discharge the applicant lived with his wife. He committed no further criminal offence. After an initial period of unemployment, he eventually settled into stable employment. He was seen at regular intervals by the nominated probation officer and a consultant psychiatrist at Sheffield. Reports on his mental condition indicated that he continued to suffer from mental disorder, but until April 1974 the probation officer, the responsible medical officer at Broadmoor to whom the probation officer was reporting and the consultant psychiatrist in Sheffield saw no reason why he should not stay at liberty.

23. On Friday, 5 April 1974, however, the applicant's wife visited the probation officer and told him that the applicant's condition had not, for a long time, been as she had described in her previous progress reports. On the contrary, she said, he remained deluded and threatening, using obscene language, accusing her of loose morals, and drinking quite heavily. She told the probation officer that she had reached the end of her endurance and

intended to leave her husband the following day, but was afraid to stay in the house with him that night.

The probation officer alerted the responsible medical officer at Broadmoor. The medical officer was aware of X's previous history, including his record of impulsive and dangerous conduct under stress; he also had copies of the psychiatric reports prepared on X during the latter's period of conditional release. In consequence, the doctor became alarmed at the possibility of a recurrence of violent behaviour by X, especially if X came to know of his wife's intention to leave him. The doctor did not judge it necessary to seek to have the wife's complaints verified since it was in his view sufficient that the complaints had been made and that the probation officer found them credible. The doctor therefore referred the matter to the Home Secretary who, acting on his advice, ordered the applicant's immediate recall to Broadmoor Hospital in pursuance of section 66 par. 3 of the 1959 Act.

24. On the afternoon of the same day, shortly after his return home from work, X was taken into custody by the police. There is no evidence as to what exactly the police said to the applicant on detaining him. X maintained that he received no explanation other than the warrant order itself. The Government referred to the usual procedure then applied in cases of this kind whereby the person concerned was simply informed that he was being recalled to Broadmoor by the Home Secretary. X was detained overnight and escorted back to Broadmoor Hospital on the following day.

25. According to the applicant, on his arrival at the hospital he was not given any explanation for his recall, although he inferred from interviews with the responsible medical officer some time after his readmission that it had something to do with complaints from his wife.

The Government maintained that immediately on X's return to Broadmoor the responsible medical officer sought to explain to him the reasons for his recall, and in particular the fears and anxieties expressed by his wife. However, since X was at this time extremely resentful, disturbed and suffering from delusions, it is possible, so the Government submitted, that he did not fully understand or appreciate the explanations afforded to him.

26. On the Saturday morning before being escorted back to Broadmoor, X had instructed solicitors to apply for a writ of habeas corpus on his behalf.

The following Monday, the solicitors spoke on the telephone to the responsible medical officer who, in confidence, mentioned in general terms the wife's visit to the probation officer, her anxiety regarding aspects of the applicant's behaviour and his, the doctor's, action in advising recall because of concern for the wife's safety.

The application - which was made ex parte - came before the Divisional Court on 24 May. With the agreement of X's counsel, the application was adjourned in order to enable further information to be sought; the Court

wished in particular to know more about the reasons that had led to the Home Secretary's action. One of the judges remarked: "It really needs more information, ... and very often the patient himself is unable to give it. One has to look to the sources which have called for his recall."

27. The same day, the applicant's solicitors wrote to the Home Office requesting information as to the reasons for their client's recall. By letter dated 31 May 1974, the Home Office replied:

"In April 1974 the supervising probation officer reported to the responsible consultant psychiatrist at Broadmoor that [X's] condition was giving cause for concern. In the light of the advice subsequently received from the consultant the Home Office considered it necessary for the protection of the public and in [X's] own interest that he would be recalled to hospital immediately for further observation and treatment."

The solicitors also approached the probation service in Sheffield, but the probation service declined to supply them with the information sought.

28. On 21 June 1974, the adjourned application for a writ of habeas corpus was heard in the Divisional Court of the Queen's Bench Division. The Court had before it the Home Office letter of 31 May 1974, letters from three of the applicant's former workmates stating that they found nothing unusual about his behaviour, and affidavits from the applicant himself, from his general practitioner and from the consultant psychiatrist in Sheffield. Exhibited to the two latter affidavits were medical reports supplied at the request of X's solicitors and covering the period of conditional discharge.

In his report, dated 12 June 1974, the consultant psychiatrist wrote:

"For quite a time I felt that whilst one was sitting on a time-bomb I had no clear evidence that he was in fact likely to be harmful to somebody. Nevertheless I felt very apprehensive throughout the whole of his period ... In my opinion the man is a querulous suspicious person liable to paranoid ideation and inevitably presents a risk to the community ..."

He also confirmed views he had expressed in September 1971 in a letter to the Sheffield probation service. In this letter he spoke of the need to "steer [X] clear of depressed situations which could lead to murder or serious bodily harm to other people", and added:

"The greatest danger in handling him is to lose one's judgement to such an extent that one minimises the degree to which he has shown evidence of a striking paranoid psychosis."

Counsel for the applicant, stating that his client had not the slightest idea why the probation officer had alerted the responsible medical officer at Broadmoor, explained:

"... although enquiries have been made, no information has been obtained on that point so that it is difficult for the applicant or his advisers to know whether there was sufficient justification for the course taken by the Home Secretary."

29. At the close of the hearing, the Divisional Court rejected the application. Although the record of the proceedings contained in the transcript is not entirely clear, it would appear that the Court, in reaching its conclusion, had regard to the discretion vested in the Home Secretary under section 66 par. 3 of the 1959 Act, the apprehension expressed by the consultant psychiatrist, and the fact that the probation officer saw possible signs of impending danger to other people. The concluding remarks of one of the judges on the Court were as follows:

"Unless the Broadmoor authorities, [the consultant psychiatrist] and the Home Secretary take this view, then people like [X] cannot be released from hospital except in the most exceptional circumstances. The only possible way this can operate is by letting people out on licence, with very careful supervision, and an immediate reaction in the event of any signs of new danger ..."

30. Following X's readmission to Broadmoor, his responsible medical officer was of the opinion that he should be further detained for treatment and medical reports indicated that he remained in a psychotic state.

In July 1975, X asked the Home Secretary to refer his case to a Mental Health Review Tribunal in accordance with section 66 par. 8 of the 1959 Act (see paragraph 13 above); X claimed to have made an earlier request in February 1975, but there is no record of this, either in the Home Office or at Broadmoor. The hearing before the Mental Health Review Tribunal took place in October 1975. The Tribunal's advice, which was not communicated to X or his solicitors, was to the effect that the patient continued to suffer from mental illness but could now be released provided he remained subject to certain conditions. In December 1975, the responsible medical officer having noted an improvement in the patient's state, the Home Secretary agreed in principle to a conditional discharge if suitable arrangements could be made.

X left the hospital in February 1976 on leave. In July of that year, the Home Secretary consented to his conditional discharge. X died on 17 January 1979.

## PROCEEDINGS BEFORE THE COMMISSION

31. On 14 July 1974, the applicant lodged his application with the Commission. He complained that he had been recalled to Broadmoor Hospital after three years of normal life, without first going before any legal authority and without any doctors having certified first that he was of unsound mind. He further complained that the habeas corpus proceedings did not fully investigate the merits of the decision to recall him, but merely examined if the recall had been ordered in accordance with the relevant

provisions of the 1959 Act. He relied on Article 3 and Article 5 par. 1, 2 and 4 of the Convention (art. 3, art. 5-1, art. 5-2, art. 5-4).

On 11 March 1976, the Commission declared the application inadmissible in so far as the applicant alleged inhuman or degrading treatment in breach of Article 3 (art. 3). By decision of 14 May 1977, it accepted the remainder of the application.

32. On 23 January 1979, the applicant's legal representative notified the Commission of his client's death, but added that the deceased's sister had informed him on behalf of herself and other members of the family, including X's parents, that they wished the case to proceed. In view of these wishes and the issues of general interest raised, the Commission decided on 1 March 1979 to retain the application.

Although the next of kin are today to be regarded as having the status of "applicants" (see the Deweer judgment of 27 February 1980, Series A no. 35, pp. 19-20, par. 37), for the sake of convenience the present judgment will continue to refer to X as the "applicant".

33. In its report of 16 July 1980 (Article 31 of the Convention) (art. 31), the Commission expressed the opinion:

- by fourteen votes to two, that X's recall to Broadmoor Hospital and further detention there had not violated his rights under Article 5 par. 1 (art. 5-1);

- unanimously, that there had been breach of Article 5 par. 2 (art. 5-2), in that X was not given prompt and sufficient reasons for his arrest and readmission to Broadmoor;

- unanimously, that Article 5 par. 4 (art. 5-4) had been violated, since X had not been entitled to take proceedings by which the lawfulness of his detention consequent upon his recall to hospital could be decided speedily by a court.

## FINAL SUBMISSIONS TO THE COURT

34. At the hearing on 22 June 1981, the Government maintained the submissions set out in their memorial, whereby they requested the Court

"(1) With regard to Article 5 par. 1 (art. 5-1)

To decide and declare that on the facts found, the actions taken by the United Kingdom Government recalling the applicant to Broadmoor Hospital and the further compulsory detention of the applicant at the Hospital, constitute a deprivation of liberty compatible with Article 5 par. 1 (art. 5-1) of the Convention.

(2) With regard to Article 5 par. 2 (art. 5-2)

(a) To decide and declare:

(i) that Article 5 par. 2 (art. 5-2) of the Convention has no application to the re-detention of a person who is taken back into custody in the circumstances in which the applicant was recalled to Broadmoor in the present case;

alternatively

(ii) that in the circumstances that obtained in the applicant's case he was in fact given sufficient information to comply with the requirements of Article 5 par. 2 (art. 5-2) of the Convention.

Alternatively

(b) To conclude that the introduction of the revised procedures now in operation for informing patients of the reasons for their re-detention makes it unnecessary for the Court to pursue the issues to which submissions (a) (i) and (ii) relate.

(3) With regard to Article 5 par. 4 (art. 5-4)

(i) To decide and declare that having regard to the applicant's conviction and committal to Broadmoor Hospital by a court in November 1968, Article 5 par. 4 (art. 5-4) of the Convention did not entitle the applicant to have the lawfulness of his detention reviewed by a court on his being recalled to the Hospital;

Alternatively, if the request at (i) should be rejected, then

(ii) To decide and declare that the remedy of habeas corpus satisfied the applicant's entitlement to have the lawfulness of his detention reviewed subsequent to his being recalled to the Hospital".

35. At the hearing, the Commission's Delegate requested the Court

"to determine the questions that have been put before [it] - that is to say, whether the applicant was a victim of a violation of Article 5 par. 1 and 5 par. 2 (art. 5-1, art. 5-2) of the Convention when he was recalled to Broadmoor Hospital on 5 April 1974 and whether thereafter the applicant was entitled to and received an adequate judicial determination of the lawfulness of his renewed detention in accordance with Article 5 par. 4 (art. 5-4) of the Convention".

## AS TO THE LAW

### I. THE ALLEGED BREACH OF ARTICLE 5 PAR. 1 (art. 5-1)

36. The applicant claimed that his recall to Broadmoor Hospital gave rise to a deprivation of liberty contrary to Article 5 par. 1 (art. 5-1) which, in so far as relevant for the present case, reads as follows:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law;

(a) the lawful detention of a person after conviction by a competent court;

...

(e) the lawful detention ... of persons of unsound mind ...;

..."

37. The relevant facts are not disputed. On 7 November 1968, following X's conviction for an offence of wounding with intent to cause grievous bodily harm, the Sheffield Assizes made an order committing him for an indefinite period to Broadmoor Hospital, a secure mental hospital for the criminally insane; on 19 May 1971, the Home Secretary ordered his conditional discharge; on 5 April 1974, he was recalled to Broadmoor Hospital by warrant of the Home Secretary; X remained confined there until February 1976 when he was allowed out of hospital on leave; he was conditionally discharged a second time on 28 July 1976 and died on 17 January 1979 (see paragraphs 20, 21, 23 and 30 above).

#### **A. Whether paragraph 1 (a) and paragraph 1 (e) were applicable**

38. Before the Commission, the Government argued that at all times throughout his detention the applicant was lawfully detained after conviction by a competent court within the meaning of paragraph 1 (a) of Article 5 (art. 5-1-a). In the Commission's opinion, on the contrary, paragraph 1 (e) (art. 5-1-e) applies to the exclusion of paragraph 1 (a) whenever the case of an accused person of unsound mind is disposed of by committal to a mental hospital for treatment rather than by imposition of a penal sanction.

39. In the Court's view, there was, in the full sense of the term, a "conviction" - that is to say, a finding of guilt (see the Guzzardi judgment of 6 November 1980, Series A no. 39, p. 37 par. 100) - "by a competent court" and, following and dependent upon that conviction, a "lawful detention" ordered by the same court. Sub-paragraph (a) therefore applies. However, the court did not deal with X by way of punishment but, being satisfied that he was suffering from a mental disorder warranting his confinement in a mental hospital for treatment, committed him to Broadmoor. Consequently, sub-paragraph (e), in so far as it relates to the detention of "persons of unsound mind", also applies. It accordingly follows that, initially at least, the applicant's deprivation of liberty fell within the ambit of both sub-paragraphs.

Having regard to the reasons for X's recall to hospital in 1974 and subsequent detention there until 1976, sub-paragraph (e) likewise covers the second stage of his deprivation of liberty. The particular circumstances of this case, and notably the fact that X was conditionally released and enjoyed a lengthy period of liberty before being re-detained, may give rise to some doubts as to be the continued applicability of sub-paragraph (a). The Court does not judge it necessary to decide the point, however, since it must in any event verify whether the requirements of sub-paragraph (e) were fulfilled and no problem arises in the present case as regards compliance with the requirements of sub-paragraph (a).

### **B. Compliance with Article 5 par. 1 (art. 5-1)**

40. In its *Winterwerp* judgment of 24 October 1979, the Court stated three minimum conditions which have to be satisfied in order for there to be "the lawful detention of a person of unsound mind" within the meaning of Article 5 par. 1 (e) (art. 5-1-e): except in emergency cases, the individual concerned must be reliably shown to be of unsound mind, that is to say, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder (Series A no. 33, p. 18, par. 39).

41. The applicant's counsel argued that the recall procedures established under section 66 of the 1959 Act, since they do not lay down any minimum conditions comparable to those stated in the *Winterwerp* judgment, and in particular the need for objective medical evidence, were incompatible with Article 5 par. 1 (e) (art. 5-1-e). The unfettered discretion vested in the Home Secretary meant, so it was submitted, that any recall decision, even one taken in good faith, must by its very nature be arbitrary.

Section 66 par. 3 is, it is true, framed in very wide terms; the Home Secretary may at any time recall to hospital a "restricted patient" who has been conditionally discharged. Nevertheless, it is apparent from other sections in the Act that the Home Secretary's discretionary power under section 66 par. 3 is not unlimited. Section 147 par. 1 defines a "patient" as "a person suffering or appearing to be suffering from a mental disorder" and section 4 par. 1 defines "mental disorder" as "mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind". According to the Government, it is implicit in section 66 par. 3 that unless the Home Secretary on the medical evidence available to him decides that the candidate for recall falls within this statutory definition, no power of recall can arise.

Certainly, the domestic law itself must be in conformity with the Convention, including the general principles expressed or implied therein



(see, *mutatis mutandis*, the above-mentioned Winterwerp judgment, p. 19, par. 45). However, section 66 par. 3, it should not be forgotten, is concerned with the recall, perhaps in circumstances when some danger is apprehended, of patients whose discharge from hospital has been restricted for the protection of the public (section 65 par. 1 of the 1959 Act - see paragraph 11 above). The Winterwerp judgment expressly identified "emergency cases" as constituting an exception to the principle that the individual concerned should not be deprived of his liberty "unless he has been reliably shown to be of 'unsound mind'" (*ibid.*, p. 18, par. 39); neither can it be inferred from the Winterwerp judgment that the "objective medical expertise" must in all conceivable cases be obtained before rather than after confinement of a person on the ground of unsoundness of mind. Clearly, where a provision of domestic law is designed, amongst other things, to authorise emergency confinement of persons capable of presenting a danger to others, it would be impracticable to require thorough medical examination prior to any arrest or detention. A wide discretion must in the nature of things be enjoyed by the national authority empowered to order such emergency confinements. In the Court's view, the terms of section 66 par. 3, read in their context, do not grant an arbitrary power to the Home Secretary; nor are they such that they exclude observance in individual cases of the principles stated in the Winterwerp judgment (see, *mutatis mutandis*, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 91, par. 240).

Having regard to the foregoing considerations, the conditions under the 1959 Act governing the recall to hospital of restricted patients do not appear to be incompatible with the meaning under the Convention of the expression "the lawful detention of persons of unsound mind". What remains to be determined is whether the manner in which section 66 par. 3 was in fact applied in relation to X gave rise to a breach of Article 5 par. 1 (e) (art. 5-1-e).

42. It is not disputed that the applicant's deprivation of liberty was effected "in accordance with a procedure prescribed by law" and that throughout it was "lawful" in the sense of being in conformity with the relevant domestic law (see paragraph 89 of the Commission's report). However, it was submitted on behalf of the applicant that his deprivation of liberty was arbitrary and unlawful, and thus not justified under Article 5 par. 1 (e) (art. 5-1-e), because he had not been "reliably" shown to be of unsound mind by objective medical evidence existing at the time of his recall.

43. The object and purpose of Article 5 par. 1 (art. 5-1) is precisely to ensure that no one should be deprived of his liberty in an arbitrary fashion; consequently, quite apart from conformity with domestic law, "no detention that is arbitrary can ever be regarded as 'lawful'" (see the above-mentioned Winterwerp judgment, pp. 16 and 18, par. 37 and 39). Three minimum conditions required for "the lawful detention of a person of unsound mind" are set out above (at paragraph 40). Whilst the Court undoubtedly has the

jurisdiction to verify the fulfilment of these conditions in a given case, the logic of the system of safeguard established by the Convention places limits on the scope of this control; since the national authorities are better placed to evaluate the evidence adduced before them, they are to be recognised as having a certain discretion in the matter and the Court's task is limited to reviewing under the Convention the decisions they have taken (see the above-mentioned Winterwerp judgment, pp. 18 and 20, par. 40 and 46).

44. The applicant was a man with a history of psychiatric troubles. He was first committed to Broadmoor Hospital after his conviction for an offence involving a violent attack on a workmate. His discharge was made conditional upon, *inter alia*, his being subject to medical supervision at a psychiatric out-patients' clinic. The consultant psychiatrist who treated him during the period of his conditional discharge considered him to be "a querulous suspicious person liable to paranoid ideation [who] inevitably presents a risk to the community"; in a letter written in 1971 to the Sheffield probation service, the consultant psychiatrist spoke of the need to "steer [X] clear of depressed situations which could lead to murder or serious bodily harm to other people". Lastly, X's wife visited the probation officer and told him that, contrary to what she had stated earlier, her husband remained deluded and threatening.

The reaction of the authorities must be seen against this background (set out at paragraphs 20, 21, 23 and 28 above). On being informed of the wife's complaints, the responsible medical officer at Broadmoor, who had copies of the psychiatric reports prepared concerning the applicant during the period of his conditional release, became alarmed at the possibility of a recurrence of violent behaviour by the applicant, especially if he came to know of his wife's intention to leave him. The responsible medical officer therefore referred the matter to the Home Office and, acting on the doctor's advice, the Home Secretary issued a warrant in pursuance of which the applicant was recalled to hospital the same day, without prior medical examination or verification of the wife's allegations (see paragraph 23 above).

45. Regard must also be had to the overall system under the 1959 Act governing the discharge and recall of restricted patients. Under section 65 par. 1, a court may direct that a hospital order against an offender be made subject to restrictions in respect of discharge only where it appears necessary for the protection of the public (see paragraph 11 above). When the Home Secretary, pursuant to section 66 par. 2, discharges a patient from hospital while a restriction order is in force (see paragraph 12 above), he is thus suspending a measure taken to protect the public. As was stated by one of the Divisional Court judges at the hearing on 21 June 1974 in the habeas corpus proceedings brought by X, very often the only way patients of this kind can be allowed back into the community is by releasing them on

licence, with very careful supervision and an immediate reaction in the event of a sign of new danger (see paragraph 29 in fine above).

In such circumstances, the interests of the protection of the public prevail over the individual's right to liberty to the extent of justifying an emergency confinement in the absence of the usual guarantees implied in paragraph 1 (e) of Article 5 (art. 5-1-e) (see paragraph 41, third sub-paragraph, above). On the facts of the present case, there was sufficient reason for the Home Secretary to have considered that the applicant's continued liberty constituted a danger to the public, and in particular to his wife.

46. While these considerations were enough to justify X's recall as an emergency measure and for a short duration, his further detention in hospital until February 1976 must, for its part, satisfy the minimum conditions described above (at paragraph 40). These conditions were satisfied in the case of X: having examined X after his readmission to Broadmoor, the responsible medical officer was of the opinion that he should be further detained for treatment. This opinion was maintained until December 1975 when an improvement in his condition was noted; up till then the medical reports indicated that he continued in a psychotic state (see paragraph 30 above). Like the Commission (see paragraph 96 of the report), the Court has no reason to doubt the objectivity and reliability of this medical judgment.

47. In conclusion, there was no breach of Article 5 par. 1 (art. 5-1).

## II. THE ALLEGED BREACH OF ARTICLE 5 PAR. 4 (art. 5-4)

48. It was argued on behalf of the applicant that he had no possibility of having the lawfulness of his readmission to Broadmoor judicially determined as required by Article 5 par. 4 (art. 5-4) 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."

49. The Court would recall that by virtue of the two orders made against him in November 1968 by the Sheffield Assizes following his conviction for a criminal offence, X was transferred from the authority of the courts to the authority of the Home Secretary and committed to a psychiatric hospital for an indefinite period. After releasing him in May 1971, the Home Secretary ordered his return to hospital in April 1974. This was an administrative decision based, in part, on circumstances distinct from those prompting the initial court orders. Furthermore, although the conditions specified under sections 60 par. 1 and 65 par. 1 of the 1959 Act for the making of such orders depend upon matters, notably medical, which of their nature may change with the passage of time, there was no system of periodic judicial review to verify that these conditions remained satisfied throughout the contested detention (see paragraphs 10-11 above).

### A. Proceedings before the Sheffield Assizes in 1968

50. As their main submission, the Government contended that the requirements of Article 5 par. 4 (art. 5-4) were met by the proceedings before the Sheffield Assizes in 1968. In this connection, they relied on a passage from the De Wilde, Ooms and Versyp judgment of 18 June 1971 (Series A no. 12, p. 40, par. 76):

"At first sight, the wording of Article 5 par. 4 (art. 5-4) might make one think that it guarantees the right of the detainee always to have supervised by a court the lawfulness of a previous decision which has deprived him of his liberty... Where [this] decision ... is one taken by an administrative body, there is no doubt that Article 5 par. 4 (art. 5-4) obliges the Contracting States to make available to the person detained a right of recourse to a court; but there is nothing to indicate that the same applies when the decision is made by a court at the close of judicial proceedings. In the latter case the supervision required by Article 5 par. 4 (art. 5-4) is incorporated in the decision; this is so, for example, where a sentence of imprisonment is pronounced after "conviction by a competent court" (Article 5 par. 1 (a) (art. 5-1-a) of the Convention)."

51. In point of fact, this passage speaks only of "the decision depriving a person of his liberty"; it does not purport to deal with an ensuing period of detention in which new issues affecting the lawfulness of the detention might subsequently arise. The judgment of 18 June 1971 considered, for the purposes of Article 5 par. 4 (art. 5-4), not only the initial decisions ordering detention for vagrancy taken in respect of three applicants (*ibid.*, pp. 40 - 43, par. 74-80), but also the procedure governing the examination of the applicants' requests for release (*ibid.*, pp. 43-44, par. 81-84).

52. Furthermore, as the Government themselves pointed out, the content of the obligation imposed on the Contracting States by Article 5 par. 4 (art. 5-4) will not necessarily be the same in all circumstances and as regards every category of deprivation of liberty (see, *mutatis mutandis*, the above-mentioned De Wilde, Ooms and Versyp judgment, pp. 41-42, par. 78).

X's detention fell within the ambit of sub-paragraph (e) of Article 5 par. 1 (art. 5-1-e) at least as much as within that of sub-paragraph (a) (art. 5-1-a) (see paragraph 39 above). The "detention of persons of unsound mind" constitutes a special category with its own specific problems (see the above-mentioned Winterwerp judgment, pp. 23-24, par. 57 and 60). In particular, "the reasons initially warranting confinement of this kind may cease to exist". This leads, so the Winterwerp judgment noted, to a consequence of some importance (p. 23, par. 55):

"... it would be contrary to the object and purpose of Article 5 (art. 5) ... to interpret paragraph 4 ... (art. 5-4) as making this category of confinement immune from subsequent review of lawfulness merely provided that the initial decision issued from a court. The very nature of the deprivation of liberty under consideration would appear to require a review of lawfulness to be available at reasonable intervals."

By virtue of Article 5 par. 4 (art. 5-4), a person of unsound mind compulsorily confined in a psychiatric institution for an indefinite or lengthy period is thus in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings at reasonable intervals before a court to put in issue the "lawfulness" - within the meaning of the Convention (see paragraph 57 below) - of his detention, whether that detention was ordered by a civil or criminal court or by some other authority.

53. It is not within the province of the Court to inquire into what would be the best or most appropriate system of judicial review in this sphere, for the Contracting States are free to choose different methods of performing their obligations. Thus, in Article 5 par. 4 (art. 5-4) the word "court" is not necessarily to be understood as signifying a court of law of the classic kind, integrated within the standard judicial machinery of the country. This term, as employed in several Articles of the Convention including Article 5 par. 4 (art. 5-4), serves to denote "bodies which exhibit not only common fundamental features, of which the most important is independence of the executive and of the parties to the case ..., but also the guarantees" - "appropriate to the kind of deprivation of liberty in question" - "of [a] judicial procedure", the forms of which may vary from one domain to another (see the above-mentioned De Wilde, Ooms and Versyp judgment, pp. 41-42, par. 76 and 78).

54. To sum up, during the period of his detention subsequent to his readmission to Broadmoor Hospital in April 1974 X should have been enabled to take proceedings attended by such "guarantees". At that stage, the proceedings that had been held in 1968 before the Sheffield Assizes were no longer sufficient to satisfy the requirements of Article 5 par. 4 (art. 5-4).

### **B. The habeas corpus proceedings**

55. The Government maintained, in the alternative, that the "lawfulness" of the said detention had in fact been "decided speedily by a court", namely by the Divisional Court of the Queen's Bench Division when hearing X's application for a writ of habeas corpus. In their submission, Article 5 par. 4 (art. 5-4) is satisfied if there is a procedure - such as habeas corpus - for determining the lawfulness, under domestic law, of the arrest or detention; where, as a matter of domestic law, a decision to deprive a person of his liberty is within the domain of the administrative authorities, the Convention does not require that the domestic courts should be empowered to review the substantive grounds or merits of that decision.

The Commission did not agree with this line of reasoning. Reaffirming the opinion it had stated in its report of 15 December 1977 in the Winterwerp case, it interpreted Article 5 par. 4 (art. 5-4) as conferring on a

person compulsorily confined on the ground of unsoundness of mind the right to have a judicial determination of both the substantive and the formal lawfulness of his detention (see the above-mentioned Winterwerp judgment, pp. 26-27, par. 68 - the issue was not settled by the Court). The remedy of habeas corpus, so the Commission found, does not allow a judicial determination as wide as this. Counsel on behalf of the applicant in substance supported this view.

56. The habeas corpus proceedings brought by X are described above (at paragraphs 26, 28 and 29). The case was considered by the Divisional Court on the basis of affidavits, including one by the applicant. Such medical evidence as there was before the Divisional Court (see paragraph 28 above) was obtained by X's solicitors. The Home Secretary was himself under no obligation to procure material justification for X's detention.

All this, however, followed from the nature of the remedy provided. In habeas corpus proceedings, in examining an administrative decision to detain, the court's task is to inquire whether the detention is in compliance with the requirements stated in the relevant legislation and with the applicable principles of the common law. According to these principles, such a decision - even though technically legal on its face - may be upset, *inter alia*, if the detaining authority misused its powers by acting in bad faith or capriciously or for a wrongful purpose, or if the decision is supported by no sufficient evidence or is one which no reasonable person could have reached in the circumstances. Subject to the foregoing, the court will not be able to review the grounds or merits of a decision taken by an administrative authority to the extent that under the legislation in question these are exclusively a matter for determination by that authority (see paragraph 19 above). As X's case well exemplifies, when the terms of a statute afford the executive a discretion, whether wide or narrow, the review exercisable by the courts in habeas corpus proceedings will bear solely upon the conformity of the exercise of that discretion with the empowering statute.

In the present case, once it was established that X was a patient who had order, the statutory requirements for recall by warrant under section 66 par. 3 of the 1959 Act were satisfied (see paragraph 12 above). This being so, it was then effectively up to X to show, within the limits permitted by English law, some reason why the apparently legal detention was unlawful. The evidence adduced by X did not disclose any such reason and the Divisional Court had no option but to dismiss the application.

57. Although X had access to a court which ruled that his detention was "lawful" in terms of English law, this cannot of itself be decisive as to whether there was a sufficient review of "lawfulness" for the purposes of Article 5 par. 4 (art. 5-4). In paragraph 1 (e) of Article 5 (art. 5-1-e) as interpreted by the Court (see the above-mentioned Winterwerp judgment, pp. 17-18, par. 39, and paragraph 43 above), the Convention itself makes the "lawfulness" of the kind of deprivation of liberty undergone by X

subject to certain requirements over and above conformity with domestic law. Article 5 (art. 5) must be read as a whole and there is no reason to suppose that in relation to one and the same deprivation of liberty the significance of "lawfulness" differs from paragraph 1 (e) (art. 5-1-e) to paragraph 4 (art. 5-4) .

58. Notwithstanding the limited nature of the review possible in relation to decisions taken under section 66 par. 3 of the 1959 Act, the remedy of habeas corpus can on occasions constitute an effective check against arbitrariness in this sphere. It may be regarded as adequate, for the purposes of Article 5 par. 4 (art. 5-4), for emergency measures for the detention of persons on the ground of unsoundness of mind. Such measures, provided they are of short duration (see the above-mentioned Winterwerp judgment, p. 19, par. 42), are capable of being "lawful" under Article 5 par. 1 (e) (art. 5-1-e) even though not attended by the usual guarantees such as thorough medical examination (see paragraph 41 above). The authority empowered to order emergency detention of this kind must, in the nature of things, enjoy a wide discretion, and this inevitably means that the role of the courts will be reduced.

On the other hand, in the Court's opinion, a judicial review as limited as that available in the habeas corpus procedure in the present case is not sufficient for a continuing confinement such as the one undergone by X. Article 5 par. 4 (art. 5-4), the Government are quite correct to affirm, does not embody a right to judicial control of such scope as to empower the court, on all aspects of the case, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which, according to the Convention, are essential for the "lawful" detention of a person on the ground of unsoundness of mind, especially as the reasons capable of initially justifying such a detention may cease to exist (see paragraphs 40 and 52 above). This means that in the instant case, Article 5 par. 4 (art. 5-4) required an appropriate procedure allowing a court to examine whether the patient's disorder still persisted and whether the Home Secretary was entitled to think that a continuation of the compulsory confinement was necessary in the interest of public safety (see, *mutatis mutandis*, the above-mentioned De Wilde, Ooms and Versyp judgment, pp. 43-44, par. 82-83).

59. The habeas corpus proceedings brought by X in 1974 did not therefore secure him the enjoyment of the right guaranteed by Article 5 par. 4 (art. 5-4); this would also have been the case had he made any fresh application at a later date.

### **C. Other procedures**

60. The Government submitted that the adequacy of review proceedings, and specifically of habeas corpus proceedings, must be assessed in the light of other machinery whereby the substantive justification for the detention may be questioned.

The Court fully accepts the need to take a comprehensive view of the whole system, as apparent shortcomings in one procedure may be remedied by safeguards available in other procedures (see, *mutatis mutandis*, the above-mentioned Winterwerp judgment, p. 25, par. 62).

61. The Government drew the Court's attention to four ways by which the continued need for detention may come to be reviewed by the Home Office, namely a recommendation from the responsible medical officer that the patient be discharged, the intervention of a Member of Parliament with the Home Secretary, a direct request by the patient to the Home Secretary asking for release or for his case to be referred to a Mental Health Review Tribunal (see paragraph 15 above).

The first three do not, however, bring into play any independent review procedure, whether judicial or administrative.

The fourth calls for closer examination since, in relation to the confinement of restricted patients, the 1959 Act provides the opportunity for a periodic review on a comprehensive factual basis by Mental Health Review Tribunals. There is nothing to preclude a specialised body of this kind being considered as a "court" within the meaning of Article 5 par. 4 (art. 5-4), provided it enjoys the necessary independence and offers sufficient procedural safeguards appropriate to the category of deprivation of liberty being dealt with (see paragraph 53 above and the above-mentioned Winterwerp judgment, p. 24, par. 20). Nonetheless, even supposing Mental Health Review Tribunals fulfilled these conditions, they lack the competence to decide "the lawfulness of [the] detention" and to order release if the detention is unlawful, as they have advisory functions only (see paragraph 14 above).

Therefore, without underestimating the undoubted value of the safeguards thereby provided, the Court does not find that the other machinery adverted to by the Government serves to remedy the inadequacy, for the purposes of Article 5 par. 4 (art. 5-4), of the habeas corpus proceedings.

62. In conclusion, there has been a breach of Article 5 par. 4 (art. 5-4).

### III. THE ALLEGED BREACH OF ARTICLE 5 PAR. 2 (art. 5-2)

63. The applicant complained that he had not been adequately and promptly informed of the reasons for his recall to hospital, either by the police when he was taken into custody or, subsequently, by the responsible medical staff at Broadmoor. He claimed to be a victim of a breach of Article 5 par. 2 (art. 5-2) which provides:



"Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

64. The Government invited the Court to have regard to the revised procedure in the matter now in operation (see paragraph 16 above) and to conclude that it is no longer necessary to pursue the question whether the superseded procedure did or did not comply with Article 5 par. 2 (art. 5-2).

The changes relied on by the Government were introduced expressly "in order to meet criticisms made by the European Commission of Human Rights" on the basis, precisely, of Article 5 par. 2 (art. 5-2). Nevertheless, they date from the end of 1980, are valid only for the future and clearly could not have restored the right claimed by X under Article 5 par. 2 (art. 5-2) whose requirements, moreover, the Government continue to deny having contravened (see the above-mentioned Deweer judgment, p. 20 par. 37 in fine, and the Luedicke, Belkacem and Koç judgment of 28 November 1978, Series A no. 29, p. 15, par. 36). It is therefore not possible to speak of a "solution", even partial, "of the matter" (see, *mutatis mutandis*, Rule 47 par. 2 of the Rules of Court and the above-mentioned Guzzardi judgment, p. 31, par. 85).

65. The Government contended that the term "arrested" in Article 5 par. 2 (art. 5-2) is not appropriate to describe the conditions under which a restricted patient may be recalled to a hospital. In their submission, the words "of the reasons for his arrest and of any charge against him" suggest that this provision refers to arrest for a criminal charge. The Commission disagreed with this interpretation which, it pointed out, would have the effect of limiting the protection of paragraph 2 to arrests coming under paragraph 1 (c) (art. 5-1-c).

Not only did the respective arguments advanced differ as to the applicability of paragraph 2 (art. 5-2) to X's situation, but they were also in conflict as to whether it had been complied with in the circumstances. In the Government's view, the reasons given to the applicant and subsequently to his solicitors were sufficient to satisfy any obligation arising by virtue of Article 5 par. 2 (art. 5-2). The Commission, on the other hand, was unanimous in concluding that whatever may have been said to X himself, there could have been no justification for withholding from his solicitors an official and detailed explanation; the vague statement from the Home Office (see paragraph 27 above) could not constitute the information necessary to make effective use of the right ensured by Article 5 par. 4 (art. 5-4).

66. The Court does not consider that it has to settle this double conflict of opinion, especially since the facts of the case are not entirely clear on the points in issue (see paragraphs 24-27 above). The Court would point out in the first place that the need for the applicant to be apprised of the reasons for his recall necessarily followed in any event from paragraph 4 of Article 5 (art. 5-4): anyone entitled - as X was (see paragraph 54 above) - to take proceedings to have the lawfulness of his detention speedily decided cannot

make effective use of that right unless he is promptly and adequately informed of the facts and legal authority relied on to deprive him of his liberty. The Court further notes that at the close of the first hearing before the Divisional Court, the application for a writ of habeas corpus was adjourned because the Divisional Court itself felt that more information was required before any decision could be arrived at (see paragraph 26 in fine above). At the adjourned hearing on 21 June 1974, since the detention was apparently legal, the onus was effectively on X to show that the Home Secretary had acted unlawfully in exercising his statutory discretion. However, it is clear from the evidence that lack of information as to the specific reasons for the recall, a matter almost exclusively within the knowledge of the Home Secretary, prevented X's counsel, and thus the Divisional Court, from going deeper into the question (see paragraph 56 above). Consequently, the complaint under paragraph 2 (art. 5-2) amounts, in the particular circumstances, to no more than one aspect of the complaint that the Court has already considered in relation to paragraph 4 (art. 5-4); there is no call to rule on the merits of a particular issue which is part of and absorbed by a wider issue (see, *mutatis mutandis*, the above-mentioned Deweer judgment, pp. 30-31, par. 56 in fine, and the Dudgeon judgment of 22 October 1981, Series A no. 45, par. 69).

#### IV. THE APPLICATION OF ARTICLE 50 (art. 50)

67. Counsel on behalf of X stated that, should the Court find a violation of the Convention, they would be submitting a claim under Article 50 (art. 50) for just satisfaction to obtain both compensation for damage suffered and reform of the law. The Government, for their part, reserved their position.

Accordingly, although it was raised under Rule 47 bis of the Rules of Court, the question is not yet ready for decision. The Court is therefore obliged to reserve the matter and to fix the further procedure, taking due account of the possibility of an agreement between the respondent State and the applicant's next of kin.

#### FOR THESE REASONS, THE COURT

1. Holds unanimously that there has been no breach of Article 5 par. 1 (art. 5-1) of the Convention;
2. Holds unanimously that there has been a breach of Article 5 par. 4 (art. 5-4);

3. Holds by six votes to one that it is not necessary also to examine the case under Article 5 par. 2 (art. 5-2);
4. Holds unanimously that the question of the application of Article 50 (art. 50) is not ready for decision;
  - (a) accordingly reserves the whole of the said question;
  - (b) invites the Commission to submit to the Court, within two months from the delivery of the present judgment, the Commission's written observations on the said question and, in particular, to notify the Court of any friendly settlement at which the Government and the applicant's next of kin may have arrived;
  - (c) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

Done in English and in French, both texts being authentic, at the Human Rights Building, Strasbourg, this fifth day of November, one thousand nine hundred and eighty-one.

Gerard WIARDA  
President

Marc-André EISSEN  
Registrar

The separate dissenting opinion of Mr. Evrigenis is annexed to the present judgment in accordance with Article 51 par. 2 (art. 51-2) of the Convention and Rule 50 par. 2 of the Rules of Court.

G.W.  
M.-A.E.

## DISSENTING OPINION OF JUDGE EVRIGENIS

*(Translation)*

To my great regret I have been unable to agree with the majority of the Chamber as regards point no. 3 of the operative provisions of the judgment. The right of an individual deprived of his liberty to be informed promptly, pursuant to paragraph 2 of Article 5 (art. 5-2), of the reasons for his being taken into custody constitutes a safeguard of personal liberty whose importance in any system which is democratic and founded on the rule of law cannot be underestimated. Quite apart from enabling the person detained to make proper preparations for bringing legal proceedings in accordance with paragraph 4 of Article 5 (art. 5-4), it is the embodiment of a kind of legitimate confidence in the relations between the individual and the public powers. In other words, what is guaranteed is a right that is autonomous and not auxiliary to the one provided for under paragraph 4 of Article 5 (5-4). The merits of the complaint under paragraph 2 of Article 5 (art. 5-2) should therefore be examined.