***161 McFeeley v United Kingdom**

Application 8317/ 78

Before the European Commission of Human Rights

Vice-President Mr G. Sperduti, Messrs. Fawcett, Nørgaard, Ermacora, Busuttil, Dover, Opsahl, Polak, Frowein, Jörundsson, Tenekides, Trechsel, Kiernan, Klecker, Melchior, Sampaio, and Carrillo

15 May 1980

1. Exhaustion of domestic remedies (Art. 26). Certiorari.The failure of applicants to seek an order of certiorari in respect of disciplinary sanctions imposed on them by a prison governor does not constitute a failure to exhaust domestic remedies [11].1 2. Refusal to wear prison clothing. Conscience and belief (Art. 9).The right to a preferential status claimed by a certain category of prisoners whereby they would be entitled to wear their own clothes and be relieved of the requirement to do prison work and, generally, be distinguished from other prisoners convicted of criminal offences by the ordinary courts is not among the rights guaranteed by the Convention, or by Article 9 in particular [30].3. Prison discipline. Inhuman or degrading treatment (Art. 3).The loss of remission for a prison disciplinary offence does not constitute inhuman or degrading treatment within Article 3[47]. Whilst an inflexible attitude on the part of a prison authority faced with prisoners inflicting inhuman and degrading conditions on themselves may be criticised, it does not necessarily constitute a violation of Article 3 [65].4. Prison discipline. Determination of criminal charge (Art. 6).A prison disciplinary offence does not fall within the scope of Article 6 and the harshness of accumulated disciplinary awards does not of itself detract from the disciplinary character of the offences [97]. Assaults on prison officers or other prisoners belong to both disciplinary law and the criminal law, but may be regarded as being disciplinary matters provided that the punishments imposed are not such as to alter the characterisation of the offences [99–101].

Representation

- Francis Keenan, solicitor, and Professor Kevin Boyle, University College, Galway, for the applicants.

The following cases are referred to in the decision:

- 1.Colne v. U.K., Application No. 7052/75 (1977) 10 D. & R. 154.
- 2.McMahon v. U.K., Application No. 7113/75 (1977) 10 D. & R. 163.
- 3.Carne v. U.K., Application No. 7136/75 (1977) 10 D. & R. 205.***162**
- 4.Belgian Linguistic Case (No. 2) (1968), Series A, No. 6; 1 E.H.R.R. 252.
- 5.De Becker v. Belgium (1958) 2 Yearbook 214.
- 6.De Wilde, Ooms and Versyp v. Belgium (No. 1) (1977), Series A, No. 12; 1 E.H.R.R. 373.
- 7.Donnelley v. United Kingdom Application No. 5577-83/72 (1975) 4 D. & R. 4.
- 8.Engel v. the Netherlands (1976), Series A, No. 22; 1 E.H.R.R. 647.
- 9.Ensslin, Baader and Raspe v. Federal Republic of Germany (1978) 14 D. & R. 64.
- 10.First Greek Case (Second Decision on Admissibility) (1968) 11 Yearbook 730.
- 11.Greek Case (1969) 12 Yearbook: The Greek Case 186.

- 12.Ireland v. United Kingdom, Application 5310/71 (1976) 19 Yearbook 753.
- 13.Ireland v. United Kingdom (1978), Series A, No. 25; 2 E.H.R.R. 25.
- 14.Kiss v. United Kingdom, Application No. 6224/73 (1976) 7 D. & R. 55.
- 15.Lawless v. Ireland, Series B, No. 1.
- 16.R. v. Board of Visitors of Hull Prison, Ex parte St. Germain [1979] Q.B. 425, [1979] 2 W.L.R. 42, [1979] 1 All E.R. 701, C.A.
- 17.Tyrer v. United Kingdom (1978), Series A, No. 26; 2 E.H.R.R. 1.
- 18.X. v. Iceland (1976) 19 C.D. 342.
- 19.X. v. United Kingdom, Application No. 6840/74, (1977) 10 D. & R. 5.

Partial Decision as to Admissibility

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The Facts

The facts of the case, some of which are disputed by the parties, may be summarised as follows.

The applicants are all prisoners convicted of scheduled 'terrorist-type' offences under the Law of Northern Ireland as defined in the Northern Ireland (Emergency Provisions) Act 1978 and by virtue of the special procedures provided for under that Act. They are all serving their sentences at H.M. Prison, The Maze, Northern Ireland.

The applicants are:*Thomas McFeeley*, convicted on 4 February 1977 of attempted wounding, of possession of a firearm with intent to endanger life, of use of a firearm with intent to prevent arrest, of possession of a firearm in suspicious circumstances, and of two offences of robbery. He was given sentences totalling 26 years' imprisonment.***163** In 1974 the applicant, accompanied by others, blasted his way out of Portlaoise Prison, near Dublin.*Kieran Nugent* , convicted on 14 September 1976 of 'hijacking' a vehicle. He was sentenced to three years' imprisonment.3 *John Hunter*, convicted on 2 September 1977 of two offences of possessing explosive substances. He was sentenced to five years' imprisonment.*William Campbell*, convicted on 16 June 1977 of possession of a firearm and ammunition with intent to endanger life, and possession of firearms and ammunition in suspicious circumstances. He was sentenced to 12 years' imprisonment.

Special category status

It is explained that in June 1972, in the face of a hunger strike involving a number of prisoners, the Government of the day introduced a 'special category' status for prisoners involved with paramilitary organisations. Because of the large numbers involved and the lack of normal cell accommodation, special category prisoners were housed in compounds. They were not to be required to work, could wear their own clothes and were allowed additional privileges, including extra visits and food parcels. By the end of 1974 the number of special category prisoners had risen from 688 at the end of 1973 to 1,065 housed in compounds at The Maze, Magilligan and in Belfast.

In November 1975 the Secretary of State announced the Government's intention to phase out special category status. This followed a recommendation from the Gardiner Committee Report4 where it had been remarked that prisons of the compound type involve a total loss of disciplinary control by the Prison authorities inside the compounds and make rehabilitation work impossible.

The phasing out process began with effect from 1 March 1976; no prisoner convicted of an offence committed on or after that date has been granted special category treatment regardless of the nature of his offence.5

Simultaneously with the coming into force of this ruling, the Government introduced new provisions relating to the earning of remission for all sentenced prisoners contained in the Treatment of Offenders (Northern Ireland) Order 1976.6 Remission may now be granted for not more than one-half of the total sentence pronounced, whereas previously the maximum remission was one-third of a sentence only.***164**

As the applicants were all convicted of scheduled offences committed after 1 March 1976, they are required to serve their sentences according to the regime which applies to ordinary prisoners. The applicants have, on grounds of conscience, refused to conform to the initial requirement of wearing the prison underclothes and footwear supplied. Their own clothing having been removed, they have thus remained naked and without footwear throughout their imprisonment. They have equally refused to engage in prison work on grounds of conscience.

The applicants state that in the course of 1977 and 1978 there have been two major deteriorations in their circumstances since sentence and their refusal to wear prison uniform or engage in prison work.

They state that for purposes of going to the washroom or to use toilet facilities they were permitted to leave their cells wrapped in a blanket. However, subsequently they were forbidden to remove the blanket from the cell. Consequently they used a towel to gird their bodies en route to the toilet and wash facilities. However, no further towel was supplied for purposes of washing and shaving. Accordingly, to use the towel after washing, the applicants were by necessity required to stand naked. This they regarded as degrading and unhygienic. They requested that an extra towel be supplied as was available to other prisoners but this was refused. As a protest against this they refused at first, to shave. Subsequently they also refused to wash or leave their cells for this purpose.

Secondly, they say that around February 1978, because of allegedly excessive supervision during the use of the toilet facilities where they claim to have been strip-searched, involving a search of the orifices, and overlooked while using the toilet, they refused to leave their cells for toilet purposes during the day, using instead the night-time chamber pot. This action included the refusal to 'slop-out' or empty their chamber pots after toilet facilities each morning, resulting in prison warders allegedly emptying the pots into the cells, leading to severe discomfort and risk to health. This alleged action by the warders confirmed their protest and the applicants now refuse in all circumstances to go to the toilet outside their cells unless they are provided with clothing. It is therefore necessary for them to use the chamber pots in their cells during the day and night, which pots they allege are not emptied by the authorities. They further allege that in April 1978 the prison warders used a hosepipe in their cells, including occasions when the prisoners were asleep. These actions led to shock and upset and left cells, mattresses and prisoners soaked.

Allegations concerning prison conditions and treatment

The applicants complain that as a result of their protest they are subject to the following treatment and prison conditions.***165** 1.

Discipline

Following their refusal to wear prison uniform and engage in prison work, the applicants have from the outset regularly been charged with breaches of rule 30 (1) of the Prison Rules (Northern Ireland) 1954, 7 which provides that: A prisoner who is guilty of any act or omission contrary to the security or good order of the prison shall be guilty of an offence against discipline and on his offence being reported to the Governor shall be dealt with as here and after provided in these Rules.

Following adjudication by the Governor, the applicants claim that they have from the outset of their sentences been awarded punishments as follows:

- 14 days' loss of remission;
- 14 days' loss of earnings;
- 3 days' cellular confinement;
- 14 days' denial of leisure clothing;
- 14 days' loss of privileges, including visits, letters, and visits to the 'tuck-shop'.

At the end of each period of 14 days, the same group of penalties is imposed without variation for a further period of 14 days. As a result the applicants claim that they are undergoing a permanent period of punishment.

Since 19 October 1978 the adjudications have been at 28-day intervals and the awards of loss of remission and loss of privileges have also been of 28 days and cellular confinement has ceased.

The Government state that the applicants have consistently refused to participate in adjudications and none of them has taken any opportunity of defending himself against the charges. The applicants Nugent and McFeeley regularly hammer with their plastic mugs and toilet pots to disrupt adjudications.2.

Accommodation

The applicants claim they are confined to their cells on a permanent basis. The only period they are out of their cells is for 30 minutes for religious service on Sunday, a visit, or when placed in the punishment cell in solitary confinement. Prior to February 1978 they were outside the cell when at the toilet or for a weekly shower.

Each of the applicants shares a cell with another prisoner. The cell measures 12 × 8 × 10 feet and was designed for one prisoner only. The cells, they claim, have no furniture except two mattresses and blankets. The furniture was removed from the cells as a collective punishment because several prisoners (not including any of the applicants) are alleged to have damaged their furniture.***166** During the period of three days' cellular confinement in every 14 days' punishment, the mattresses are also removed from the cell, leaving them entirely empty but for the two occupants.

The applicants further claim that the cell windows do not 'present in their size, location and construction as normal an appearance as possible', as required by rule 10 of the Standard Minimum Rules. The applicants all complain that these windows have a disorientating effect. Several of the applicants also complain that the electric lighting in their cells is on occasions continuously on, and often for periods in excess of 24 hours.

All of the applicants complain that their mattresses are damp from contact with the cell floor. In addition, since the incidents involving the use of a hosepipe, the blankets, mattresses and cells have been soaked. Accordingly the sanitary conditions are extreme. They state that there is considerable risk to health from these conditions with excrement and urine remaining in the cell along with discarded food. The authorities have used a severe, undiluted disinfectant in their cells, which has caused severe reactions, including difficulty in breathing, irritated chest and throat, watering eyes, and in some cases, nose-bleeds and vomiting. The applicants also complain that the fact that they must use a chamber-pot in the presence of their cell companion is degrading and an assault on their dignity.

The Government states that while subject to loss of privileges for breach of prison rules prisoners are not permitted to associate freely with other prisoners. They are permitted to leave their cells for visits to the welfare officer or the medical officer, to receive visits from lawyers, to attend religious services, to appear before the Governor, to receive a monthly visit, to take one hour's exercise in the open air every day, to visit the toilet facilities, to take a shower twice weekly, to visit the library and

to collect meals from the dining room. For most of these purposes prisoners may wear prison clothing or prison underwear or nothing. They must at least wear underpants to see the welfare officer or receive a visit from a lawyer. However, the protesting prisoners have refused to leave their cells except to take visits or to attend religious services and have refused to take advantage of most of the opportunities available to them for association. Since March 1978 they have refused to leave their cells even to use common facilities such as the dining room, toilets or washroom, or in order to take exercise.

The Government denies that furniture was removed from the cells as a collective punishment. In April 1978 furniture had to be removed from H-block 5 (where the applicants were accommodated) because of its misuse by prisoners. Prisoners had been using the furniture to beat on cell doors during adjudications on disciplinary charges. In one particular incident inmates shouted to the rest of***167** the wing that furniture was being removed. Within minutes the rest of the furniture had been destroyed; tables, bedside lockers, bookshelves and in some cases chairs were broken in pieces and thrown through windows. Eventually the beds which had been dismantled by the prisoners had to be removed because they presented a risk to prison officers. The restoration of cell furniture is stated not to be dependent upon wearing prison clothing or agreeing to do prison work. All protesting prisoners have been asked on two separate occasions if they will undertake not to damage their cell furniture so that is can be replaced. All have refused to give such an undertaking.

During the period when cellular confinement was awarded mattresses were removed from cells during the day-time only, they were never removed from cells during the night.

Central heating is designed to keep the temperature in the cells and common areas at at least 65°F. However, prisoners have broken all windows in H-blocks 3, 4 and 5. Initially the prisoners broke the glass in the windows which was replaced by plywood and perspex. However, on 12 November 1978 prisoners in H-block 5 succeeded in burning the perspex sheets and then kicking them out. Further weather protection consisting of corrugated plastic sheets has been installed on the exterior of some wings. Each prisoner has been told that if he will undertake not to break his window it will be replaced. The applicants have refused to give this undertaking.

The Government states that all windows have clear glass with ventilator fan-lights and that the prisoners can open them. They permit adequate light to enter the cell and through them the sky and other buildings are visible. Wire fencing six yards away from outward facing cells is for security purposes. They are not intended to have a disorientating effect.

The Government states that the lighting is never left on continuously. The principal lighting can be switched off from inside the cell. A dim light is operable from outside for security checks but never left on continuously.

It is pointed out that the damp mattresses are entirely the fault of the protesting prisoners. Nevertheless any mattress which has become damp is immediately changed and mattresses are not put into cells which have been cleaned, until the cell is dry. No prisoner has ever been hosed down while in his cell.

The disinfectant used to clean cells is used in accordance with the instructions issued for its use. A complaint by the applicant Nugent of the use of disinfectant was investigated by a member of the board of visitors and found to be untrue. Cells that have been cleaned are aired and dried out before they are re-occupied.

The applicants state that a small number of prisoners did damage furniture, but they deny that the furniture was destroyed. They***168** allege that the furniture was removed from all cells on all wings as a collective punishment. The applicant McFeeley

who was in A Wing in April 1979 states that there was no damage to furniture or beds in this wing and yet the furniture was removed from all the cells.

They state that as of April 1979 the applicants will have been denied beds and furniture for 12 months. They point out that in a press release of the Northern Ireland Office dated 1 August 1978 the Government has stated that return of the furniture and bed is conditional on the prisoners comforming to the prison rules, *i.e.* wearing uniform and agreeing to do prison work. In this respect the applicant Campbell states that he was told by the board of visitors on 14 June 1978 that if he conformed to prison rules and wore prison uniform furniture would be restored to his cell. The applicant McFeeley claims that the prison Governor said the same to him.

The applicants allege that the denial of furniture is being used as a means of imposing pressure on non-conforming prisoners. It is pointed out that since April 1978 all newly-sentenced prisoners who have refused to wear prison uniform have been housed in cells without furniture from the date of their reception into prison. In their cases it is impossible to claim that the furniture is denied them because they have broken it, since they were not sentenced in April 1978 when this is alleged to have occurred.

Finally, the applicants state that they were asked on only one occasion whether they would be prepared to give an undertaking not to damage their furniture. They did not refuse to give an undertaking, as claimed by the Government, but asked for an opportunity to consider the matter overnight. However, they were never approached again for their views and the furniture was not restored.

The applicants maintain their allegations concerning the hosing of their cells. They refer to the account given by Mr. Maguire M.P. of his visit on 19 May 1978 where he refers to the cells being damp, having been hosed when the occupants were at mass. The applicant Hunter complains that on the morning of 29 April 1978 his cell was hosed down for about five minutes while he occupied it. He got the impression that those responsible had been drinking. As a consequence the cell mattress and bedding was soaked.

The applicants refer to the finding by a member of the board of visitors, that a complaint concerning disinfectant was 'untrue'. If by 'untrue' it is intended that none was used, this is clearly a contradiction of the admission that it was used. As to whether the disinfectant used had or had not affected Nugent as claimed, the answer that it was untrue seems extraordinary. The member of the prison visiting board was not present when it happened, nor***169** did he or she seek to have Nugent medically examined. The applicants asked that the Commission have the record of the finding produced and also the disinfectant used. Each of the four applicants complain in their statements about the effects on them of the use of disinfectant on different occasions. The disinfectant was sprayed into cells through the spyhole and would fill the entire cell. The applicant Campbell states that he had to make for the window to get fresh air and that his eyes and ears were streaming. In applicant Nugent's case it caused difficulty in breathing. Applicant McFeeley states that it caused sickness and vomiting.3.

Personal hygiene

Since the prisoners do not use the washing facilities they state that they are dirty and unshaven and in permanent danger of contracting illnesses and disease. In general, they state that their cells are in a filthy condition. In regard to conditions of hygiene the applicants point out that throughout their period of detention, they have not received an adequate supply of toothpaste and they allege that as a punishment, they do not receive adequate towelling. Other prisoners, they complain, receive a bath towel and a hand towel. The applicants complain that they receive only one towel. They also complain that they receive an inadequate daily supply of toilet paper. They further allege that from September 1976 to May 1977 they were denied the right to use the toilet facilities in the wing upon request during day-time. Throughout that period the applicants

Nugent and **McFeeley** had to use the cell pot both night and day. The applicant **McFeeley** states that on a date in May 1977 Dr. Deeny of the prison visiting board discovered that the applicants and other prisoners were not permitted to use the toilet block on request during the day. He raised the matter with a prison officer and thereafter they were able to go to the toilet on request. Corroboration for this claim is supplied by Dr. Deeny himself.

The Government, on the other hand, replies that any danger to health which may occur from the deliberate actions of the protesting prisoners to destroy hygiene conditions is their own responsibility. The prison administration has done all in its power to preserve community health and the health of individual prisoners. Prisoners are moved from fouled cells every three weeks. The cells are then cleaned with industrial cleaning steam hoses with added disinfectant fluid. If necessary the cells are repainted. A fresh issue and collection of food utensils is made for every meal and utensils then sterilised. External surfaces contaminated by excreta thrown out of the windows are cleaned daily. Disinfectant powder is used after cleaning.

Each applicant is seen weekly as a matter of routine by a doctor. The Northern Ireland Prison Department receives reports of sick parade attendances and frequent reports from doctors on the***170** sanitary state of each block. Normal medical services continue to be available to prisoners.

The right to use toilet facilities has never been withdrawn at any time during the protest campaign. The facility is available on request except during the night. The board of visitors examined. Dr. Deeny's allegations in this regard and found them to be untrue.4.

Clothing and bedding

The applicants state that they are naked and have no clothing or footwear. All that they have to wear is a blanket or a towel. They allege that the blanket and towels are changed at infrequent intervals and always long after they are dirty and need washing. They allege that the use of a blanket or towel is sometimes denied them altogether. For example while on isolation punishment the applicant, Campbell, claims he was not permitted to gird himself with his towel while going to the toilet. Further, while being presented to the Governor for adjudication he says he was forced to attend naked without the towel or blanket. The applicants also claim that as from November 1976 they were not allowed to remove their blankets from the cell. They state that this decision proved the most important event in accounting for the deterioration of conditions at the Maze between prisoners and the staff.

The Government replies that protesting prisoners urinated and defecated into items of prison clothing which were left in their cells. Prison clothing is no longer kept in each cell but a clean set is kept for each prisoner in his wing and is available at all times that the prisoner wishes to wear it. All prisoners are issued with a towel (changed weekly), sheets, pillow-slips and three blankets (changed monthly). Sheets and pillow-slips have been destroyed and abused by all protesters, including the applicants, and are therefore no longer used.

The Government accepts that in November 1976 instructions were given that blankets should not be removed from the cells. By this date it was clear that protesting prisoners were using blankets as a form of substitute clothing. It was considered that in the circumstances of the protest it would have jeopardised good order in the prison to have allowed prisoners to wear blankets in place of prison uniform.

The Government also accepts that when prisoners are sent to the punishment block they are not permitted to wear towels either when going to the toilet or for adjudication by the Governor. This rule, however, is not enforced within the prisoners' own wing. Prison clothing or prison underwear remained available at all times.5.

Food

The applicants complain that the food is cold and they allege that it is deliberately so in order to punish them for refusing to***171** wear a uniform. Because their cells lack any furniture, they state that they are forced to eat their food from the floor. In addition they complain of lack of salt, pepper, sauces and savouries with their food. They also complain that they are given insufficient milk and that the water supply in their cell is inadequate. The applicant McFeeley alleges that the container holding the water supply provided in the cell has been returned with excrement smeared around it, and that it does not have a lid to keep the water clean.

The applicants also complain of the 'slopping out' arrangements coinciding with the delivery of their food. Thus the applicant Nugent states as follows: After I am up the prison officers come round the door along with the orderlies (loyalist prisoners) to slop us out. They bring a large open bucket which is set in the cell (not outside). They won't allow it. I then have to pour the contents of my pot into the bucket and with it in your cell, any splashes go over the cell and bed clothes. This bucket is emptied after five or six cells, so the smell in the cell is unpleasant when emptying pots. There is no disinfectant when this is happening, nothing to rinse out the pot in so the smell is rather bad. Also the breakfast comes round before the slop out finishes. The prison officers will not stop the slop out which means our food is on the wing along with the bucket of waste being carried back and forth along the wing. The orderlies are well protected for doing this—they wear a long apron from neck to ankles, surgical gloves and industrial facemasks.

They add that since there is no furniture in their cells they are forced to eat off the floor at meal times. Moreover they claim that the plate is so small that the bread accompanying the meal has to be placed on the cell floor.

The Government states, on the other hand, that food is delivered to the blocks in sealed containers. It is then made up into meals for prisoners and delivered to cells. This is necessary because protesting prisoners refused to go to the dining room.

Water is supplied to all protesting prisoners in half-gallon amounts and changed twice daily.

There is no truth in the allegation that food is served cold deliberately or that the applicant **McFeeley's** water container was deliberately contaminated. Lids were used for improper purposes and have been removed.

The Government concedes that food has to be eaten from the floor since, due to the behaviour of the prisoners, cell furniture has had to be removed. However, food is distributed on plates of sufficient size to enable all of it (including bread) to be eaten from the plate. Finally, it is pointed out that slopping out and the distribution of food are always carried out as totally separate operations.***172** 6.

Medical services

The applicants state that they have to wear uniform for some medical purposes, but for others a prisoner has the option of going naked. Thus when the applicants might wish to see a specialist from outside the prison or a doctor at a location outside the block, they are required to wear full prison dress to avail themselves of the visit. Similarly, if they wish to attend at the hospital outside the block, they are required to wear full uniform. The applicant Campbell, who had stomach and legs complaints, wore the full dress on five occasions of medical treatment.

For purposes of sick parade in the morning the applicants had the choice of wearing the uniform or going naked. They state that the procedure at sick parade involved the prisoner requesting to see the doctor early in the morning and when the doctor attended at the medical inspection room, going to the room and waiting his turn for a consultation. They were not permitted to stay in the cell and be medically attended. All applicants claim that on several occasions they were refused examinations in their cells. The applicants state that in accordance with

rule 35 (1) of the Prison Rules they had to be certified as fit by the medical officer to undergo cellular confinement. Furthermore, under rule 68 (3), a medical officer must see prisoners under punishment every day. However they claim that on such occasions the medical examination of them was entirely summary, consisting of a doctor and, on occasions a prison officer, asking if they had 'any medical complaints'. The doctor did not examine the prisoner or ask that he submit to an examination. Furthermore, the applicants Nugent and McFeeley state that they were not seen by a medical officer daily as required by rule 68 (3) when on cellular confinement punishment until July 1977.

However, it is pointed out that since August 1978, Dr. Elliot has come regularly to the cells before the applicants were placed on cellular confinement and asked them individually to come for medical examination. The applicants state that they did not comply because by this point they had lost confidence in the medical services at the prison. It is added that the standard of medical supervision can be gauged by the fact of the denial of toilet facilities during the day time until it was discovered by accident by Dr. Deeny in May 1977.

Apart from the above, and their own limited requests for medical attention, the applicants state that they have never been properly medically examined at the initiative of the prison authorities.

The applicant Campbell complains in his statement that his eye-sight has been deteriorating and that although he has requested proper spectacles on several occasions, these have not been provided. The applicant McFeeley complains that in March 1978, after having been in hospital and having lost two stone in weight, he***173** was nevertheless certified fit by a doctor for a further period of solitary confinement punishment. He also complains that a medical officer who examined the swelling in his legs after a further period in the punishment cell told him the swelling was normal. The applicant McFeeley alleges that he was refused in May 1978 a medical examination by the prison doctor, who refused to examine him in his cell and would only examine him if he put on prison uniform. At this point he claims he had experienced 15 months' continuous confinement and due to the use of a disinfectant in the cell he states that he suffered from pain and irritation in the eyes, vomiting fits and coughing. All of the applicants complain that in order to see a doctor it is necessary for them to be awake and standing at their cell door at 7.30 a.m. in the morning in order to make their request. Should they wish for medical services at any other time of the day they would not be able to get them.

The applicants say that they have written for permission to be examined by a psychiarist of their choice, but this has been refused. They also claim that at no point during their confinement has any of them been examined by a psychiatrist from the Prison Department. The applicants note that the right to examination by a doctor of their choice is a right available to patients committed to a mental hospital.

The Government states in reply that the health of every prisoner is the responsibility of the senior medical officer.

Properly qualified doctors are always available at The Maze. Where necessary, prisoners have access to outside medical specialists. A prisoner can receive medical attention within his block in prison clothing, or in prison underwear or naked. However, it is agreed that to receive attention from outside medical specialists a prisoner is required to wear prison clothing, since he may be taken to places where he might be observed by members of the public.

A prisoner is usually asked before 8 o'clock in the morning if he has any requests. This enables him to ask to see the Assistant Governor, doctor, welfare officer or chaplain. A protesting prisoner can get medical attention at other times by asking to see the hospital officer in the block, who will call for a doctor if he thinks this is necessary.

The applicant McFeeley, on being taken to the punishment block on 13 March 1978, stated that he was on hunger and thirst strike. When visited by a doctor, he was abusive. On 21 April he requested a medical examination. The doctor declined to examine him in his cell for reasons of hygiene and advised him to come to the medical inspection room. He was not required to wear prison clothing for this purpose but he refused. On 26 May he did attend at the medical inspection room.

The applicant Campbell has also made a number of requests to***174** see an optician; after the first, he did so, and was provided with spectacles, in a frame of his own choice, costing £16; it is regretted that owing to administrative error, not all his later requests on this subject were promptly replied to; in due course he was given permission to see the optician again; when the optician arrived he declined to wait while the applicant finished taking a shower; on a later occasion, the optician declined to see the applicant as the latter refused to wash. On 7 December 1978 the applicant was asked if he wished to see the optician on his next visit and he replied that he did not wish to do so.7.

Toilet facilities

The applicants refer to the proceedings in connection with toilet functions, in particular to 'slopping out' and surveillance at the toilet units. 'Slopping out' involves emptying their chamber-pots in the morning at the toilet used in the prison wing. This procedure was required of the applicants as with all other prisoners for varying periods of their sentences. However, in their cases, it applied during day-time as well as at night. The applicants complain that to use a pot in a cell was and is degrading as it was necessary to do so in the sight of the other cell occupant. They maintain their claim that from September 1976 to May 1977 they were not permitted to use the toilet facilities during the day but have to use the cell chamber pot.

They further allege that prison officers would watch them as they actually used the toilet and pressurise them to hurry up. In addition they state that they were regularly subjected to searches both going to and coming from the toilet. Finally, they point out that in a situation where privacy in toilet functions was so crudely breached over long periods resort to such behaviour as occurred after March 1978 appeared to them less exceptional than it would to others who had not experienced their conditions.

The Government comments that all prisoners have the right to use the toilet facilities during the day-time. It has never been the case that prisoners have been obliged to use their chamber pots during the day-time as well as at night.

It is normal to have a prison officer on duty since it is a place where disorder can readily occur. It is also the experience of the prison administration that prisoners can be fractious early in the morning. When prisoners still used the toilet facilities, they did so two at a time, accompanied by one officer. The limited number of prison officers, which prevents there being more than three officers to a wing, renders excessive supervision in toilet and washing areas impossible. It is not a part of normal procedure for a prisoner to be searched while going to or from toilet facilities. Moreover, deliberate humiliation of prisoners is forbidden by the prison officers' code of discipline.***175** 8.

Searching procedure

The applicants state that there have been two types of search procedure. Firstly, light searching or 'frisking' done without the removal of clothes; secondly, close body searching or strip searching. The most regular type of searching is when they are moved from one wing to another, which occurs about every nine days, and at visits. The process of searching by the prison officers is referred to by the applicants as the 'mirror search'. The officers, it is claimed, then put pressure with their boots on the backs of the legs until he bends over, falling to his knees. The mirror is then lifted up as near as possible to the anus. Occasionally, a torch is also used to examine the back passage in this position. The

applicants' representatives state that on visiting the applicants on 10 February 1979 they personally saw the bruising on the legs of the applicants Campbell and Hunter which they were informed, had been caused by prison officers' boots during the search procedure prior to their legal visit.

The Government comments that prisoners are strip searched on transfer to a different wing and before and after visits. Because of the need to clean cells when they have been fouled by protesting prisoners, they are moved to a new wing at intervals of every seven to ten days. Experience has shown that articles may be concealed in the mouth or in the rectum. Accordingly, what is known as a close body search is carried out on these prisoners on these occasions. The prisoner, who will be naked, is required to open his mouth, which is subjected to a visual examination. He is also required to bend his legs over a small mirror and hold his buttocks apart to allow a prison officer to observe whether any object is concealed; in poor light a torch may be used for illumination, and a metal detector is used to check for metal objects. No examination involving physical contact is made of either mouth or rectum.

If a prisoner is suspected of concealing an article in his rectum, he is removed to the cell block; if a metal or dangerous object is suspected, a doctor (a prison medical officer) is called, but will not conduct a physical examination if the prisoner refuses this; if the prisoner does so refuse, or the attempted concealment of the object is not thought to involve any hazard to his health, he is left in a cell with a chamber pot until the object is excreted.

If a prisoner does not co-operate with a search before a visit, the visit is terminated, except in the case of a visit from a legal adviser. On the very rare occasions that a prisoner has refused to be searched before such a visit, the Governor is informed, the visit occurs under close visual supervision, and a search is made after the visit.

Close body searches are usually carried out by three prison officers and one senior officer; this number is required as prisoners***176** regularly make at least token resistance, but only if there is strong resistance will further officers be summoned. No other prisoners are present.

The above procedures regarding close body searches are those currently in operation. The essential features were introduced after the discovery of many smuggled items culminating in an incident on 30 August 1978 when a prisoner was found to have a metal cigarette lighter so firmly in his rectum that the medical officer had to use forceps to remove it. Procedure was not in the initial stages uniform in all respects. The use of a mirror was introduced in January 1979, since otherwise a prison officer was at risk of being kicked in the face and the prisoner might injure himself by excessive resistance.

Close body searches are judged to be necessary in view of the prisoners' ability to conceal objects which constitute a danger to prison security. For example, on 12 November 1978, flints were used to ignite pieces of toilet paper and burn perspex shields. Concealed letters might be used to engineer escape attempts or to name prison officers as potential targets for murder or to aid the smuggling of objects in and out of prison. Searches on wing transfers are judged necessary because they reveal items missed on other searches. A further illustration of the dangers is provided by an incident on 16 July 1978 in A Wing of H.M. Prison Belfast, when an explosion occurred which is thought to have been produced by concentrating match heads in a tobacco tin and using a sock as a fuse.

Items found to have been concealed in the rectum of protesting prisoners have included the following: cigarette lighters, flints, razor blades, tobacco, cigarettes, cigars, cuttings, tablets, matches, chewing gum, cigarette papers, ballpoint pen refills, metal comb, button with flints inserted in the holes.

This list includes items found both during wing transfer searches and during searches in connection with visits. On a single occasion, on 9 November

1978, there were found in the rectum of one prisoner the following items: 15 tablets, tobacco, cigarette papers, two pen refills and one razor blade.

In addition to items found in searches, there remains the possibility that other items have been or might be concealed. For example, the concealment of tobacco in pieces up to 3 inches by 1 inch in the rectum suggests that gelignite in stick form might be similarly smuggled.

It is submitted that the above circumstances render it incontestable that searching is both necessary and reasonable.

The applicants reply that strip searching began only in February 1978. Thus prior to this date several hundred of these prisoners had been in custody for more than 12 months without security having been jeopardised. Furthermore, the Government fails to ***177** make clear that strip searching only applies to protesting prisoners. The applicants categorically deny that other conforming prisoners are subject to the same procedures. Since February 1978 they have been close body searched while naked and continue to be subjected to this humiliating procedure while ordinary prisoners continue to be frisked. They point out that in addition to being searched before visits and on transfer to another wing, their cells are searched every week. The prisoner is told to remove the blanket or towel, which he may be using to cover his middle, and shake it.

The applicants do not deny the need for searches. However, they object to the humiliating character of strip searching and the regular breach of the requirement that prisoners should not be searched in the sight of another prisoner. They point out that mechanical or electronic procedures are available for detecting metal objects or other materials dangerous to security.

With reference to the list of objects found as a result of searches by the prison authorities they point out that most of such items are available as of right or as privileges to conforming prisoners (*e.g.* cigarette lighters, cigarettes, flints, buttons, cuttings, tablets, pen refills.) It is the severe prison regime the applicants are subjected to which makes these items contraband. Finally, they claim searching is concerned more to enforce the denial of privileges than to protect prison security.9.

Exercise

The applicants state that they are denied all exercise. Each of the applicants has served his sentence without a single period of exercise or recreation apart from applicant Nugent, who was permitted to exercise in his blanket before January 1977. Thus the applicant McFeeley has been 17 months and Nugent 23 months in permanent confinement. All complain of pain and discomfort. Applicants McFeeley and Campbell claim in particular to have suffered from swelling of the legs and pain in the legs. The applicants contend that the denial of exercise constitutes a form of sensory deprivation.

It is alleged that exercise was at first conditional on going naked or in a uniform. However, in the course of interviews with the Governor in May and June 1978 three of them (Hunter, Campbell and Nugent) were told that exercising naked would not be permitted because of bad weather conditions. They submit meteorological records for the period of 10 May-end of June 1978 confirming that weather conditions were exceptionally good.

It is noted that after the refusal to allow a blanket from the cell in November 1976, the applicant Nugent did not take exercise, not being prepared to do so naked or in a uniform. The applicant McFeeley also refused on the same basis. In July 1977 a request by applicant McFeeley to the Governor that the prisoners might***178** have exercise in sports gear was refused. He was informed that prisoners could have access to sports wear only if they conformed to prison rules.

The Government comments that the applicants have not been prevented from taking exercise, but have not availed themselves of the opportunity. They

may exercise in prison clothing or in prison underwear or naked. The Governor issued orders to this effect in February 1977 and November 1977. In the interests of good order in the prison they may not, however, exercise wearing blankets. If the weather conditions are inclement, the Governor will decide whether exercise should be taken naked. Moreover, they are entitled to one hour's exercise a day in the open air. Playing pitches and a gymnasium are available to prisoners conforming to prison rules.10.

Restricted diet

The applicants Hunter and Nugent complain of the award of a restricted diet while in periods of isolation punishment. This diet, known as No. 1 diet, is set out in the Schedule to the Prison Rules (Northern Ireland) 1954. They state that it consisted of breakfast: black tea, two slices of dry bread; dinner: a cup of soup; tea: black tea and two slices of bread. The applicants refer to the psychiatrist's report and in particular to his opinion that the restricted diet 'is very likely to have deleterious effect on the health of these prisoners who are very vulnerable to breakdown'.8

It is pointed out by the Government that since October 1978 the No. 1 diet is no longer employed as a disciplinary award.11.

Collective punishments

The applicants complain that all furniture has been removed from their cells because it is alleged that other prisoners (not including any of the applicants) damaged the furniture. They submit that the nature of this action by some prisoners was such that those responsible could be immediately discovered and dealt with individually under the Prison Rules. Similarly, religious literature which at that time was the only literature available to the applicants, was withdrawn because it was alleged that certain prisoners had misused the literature. Further they state that as a collective punishment, they have been denied the right to receive toothpaste from outside the prison.12.

Isolation and solitary confinement

The applicant McFeeley complains separately of his subjection to periods of isolation without adjudication and without being informed of the duration or reasons for being isolated. In his statement he states that between 10 March 1977 and 19 April***179** 1977, and again during January 1978, and in March 1978, he was subjected to solitary confinement without explanation and without any specific breach of rules being alleged or adjudicated upon. He claims that on these occasions he was in solitary confinement and refused all contact with other prisoners, denied all reading material, exercise and all his other rights. He states that on none of these occasions was he informed of the duration of the period of solitary confinement.

The applicant McFeeley claims that when he was in the punishment block he was not allowed to attend mass. He states that this is a binding obligation on a Roman Catholic. He states that in March 1978 he requested the opportunity to go to mass, on the following Sunday, from Prison Officer Aiken. The officer enquired of the Governor and subsequently returned to inform him that it would not be permitted. It is added that attendance at mass in **McFeeley's** case would not necessarily have involved association with other prisoners. Since it is normal practice to hold mass in the canteen where different wings of the prison are segregated, it would not be difficult to segregate **McFeeley** from the other prisoners. The other applicants corroborate **McFeeley's** experience. The applicants add that when their confessions are being heard every month in the cell, the door must be left ajar. They complain that the prison officer stands within earshot and the cell mate is required to stand at the door of the cell.

The Government states that on 10 March 1977 the Governor ordered that the applicant McFeeley be removed from association under rule 24 because he had been trying to set himself up as a leader of the prisoners and had been giving them orders. His re-

moval from association was approved by the chairman of the board of visitors under rule 24 as he was considered to be a menace to good order and discipline. The only suitable accommodation for a prisoner subject to rule 24 was the punishment cell. This is because the punishment cells provide the only accommodation in The Maze where a prisoner may be held away from other prisoners. However, removal from association is not a punishment, and results in no loss of privileges whatever. Had the applicant been entitled to privileges on 10 March 1977 he would have continued to enjoy them when removed from association. On 18 April 1977 the applicant was transferred to H-block 5 after having agreed to behave as other prisoners.

The applicant McFeeley was again removed to the punishment cells under rule 24 on 9 January 1978 for being a disruptive influence and giving orders to other prisoners. The applicant McFeeley declared himself to be on hunger and thirst strike. On 11 January he was transferred to H-block 3 after having ended his strike and given an undertaking not to set himself up as a spokesman.***180**

He was again moved to the punishment block on 13 March 1978 for the same reasons. He went on hunger strike between 13 March and 21 March 1978. On 19 March 1978 he was examined by the medical officer who found no cause for concern. On 30 March 1978 he was transferred to H-block 5 after assuring a Deputy Governor that he would not give orders to other prisoners. For these reasons the Government considers the allegation that his removal from association was an attempt to break his will is totally without foundation.

The Government comments that a prisoner removed from association is not normally permitted to attend mass, as this would involve association with other prisoners. However, if he asks to see a priest, the prison chaplain will be informed at once and attend to the prisoner's pastoral or spiritual needs. During applicant **McFeeley's** periods of removal from association, the prison authorities recorded several visits by the prison chaplain. It is not recorded that on any of these occasions he asked to attend mass. Nor is it recorded that such a request was made by him either to the Governor who visited him daily during removal from association or to prison officers at the daily time for making requests.

The applicants Campbell and Hunter also complain about punishment in isolation cells and resultant solitary confinement. In Campbell's case it is claimed that this punishment was awarded because he had been found with 20 cigarettes. The applicants point out that persons not on punishments are allowed cigarettes. The applicant Hunter submits that the imposition of three days' solitary confinement in the punishment block and the subjection to a restricted diet (No. 1 diet) was a wholly disproportionate sanction for his particular offence against discipline namely, possession of eight cigarettes.13.

The treatment of female prisoners in Armagh Prison

The applicants state that convicted women in the female wing of Armagh Prison are refusing on like grounds to the applicants to wear prison uniform or engage in prison work. However, they are not subjected to similar harsh treatment.

The Government comments that women prisoners in H.M. Prison Armagh have been allowed to wear their own clothing since March 1972. Although a privilege, this has been introduced on a permanent basis, and is not lost as a disciplinary award. The Government may still forbid them to wear items of clothing prejudicial to security, *e.g.* clothes similar to prison officers' uniform or constituting the uniform of a para-military organisation.

Protesting women prisoners at H.M. Prison Armagh are subject to fortnightly disciplinary adjudications for refusing to work, and the following awards are made: 14 days' loss of remission, loss of privilege visits, loss of privilege parcels, loss of privilege film shows,***181** loss of evening association on Saturday and Sunday evenings (*i.e.*, lock-up from

16.30 hours).

During work hours, they are locked in cells; they forfeit the right to educational materials (although not the use of library facilities) and, having no earnings, cannot buy materials to take part in handicrafts.

The applicants reply that the above noted difference in treatment operates to the disadvantage of male prisoners in the following detailed respects:(a)Female prisoners are permitted to wear their own clothes and are not required to wear a prison uniform. The male prisoners are required to wear a uniform and may only wear their own clothes as a privilege on limited occasions. The privilege of wearing their own clothes may not be forfeited by the female prisoners. It is forfeited by the males for the limited occasions they might avail themselves of the privilege.(b)Female prisoners are not given 'confinement to cell' on the regular cycle of three days in each fortnight as with the males until 6 October 1978, or at all.(c)Female prisoners are not subjected to periods on punishment block or to restricted diet.(d)Female prisoners, while denied evening association at weekends are permitted normal association opportunities from Monday to Friday including meal times and in the evenings. During association, they may visit each other in their cells or 'association rooms' set aside for the purpose. In these association rooms they may watch television. They may make tea in their cells for themselves and other prisoners. Male prisoners are permitted no association whether on weekdays or weekends since the onset of their sentences.(e)Female prisoners while under lock-up during working hours are nevertheless permitted out of the cells at fixed intervals in order to use the toilet facilities. Male prisoners until May 1977 were not permitted to use the toilet facilities during the day time.(f)Female prisoners have at least two separate opportunities each day for supervised exercise when they are permitted to wear their own clothes. Male prisoners have no such opportunities under such a condition.(g)Female prisoners may retain and spend up to £4 personal money per week at the canteen. Male prisoners are not permitted to retain or spend any personal money.(h)There are no restrictions imposed on the correspondence of female prisoners either on the number of letters sent or received. Males however are permitted to send and receive one letter per month only.***182** (i)Female prisoners may have access to magazines or any literature available in prison. Access to magazines or any literature was withdrawn from males from the onset of sentence under rule 201 of the Prison Rules.(j)Female prisoners have access to a daily newspaper, subject to the prison censor. Access to newspapers on a daily basis or at all has been withdrawn from male prisoners under rule 201 of the Prison Rules.(k)Female prisoners have access to the library wearing their own clothes. They may borrow books and visit the library once a week to change books. Male prisoners are required to wear the prison uniform to have access to the library. They have been refused access to the library in their towels. Having refused to wear the prison uniform they are there-fore without access to library books.(l)Female prisoners may keep radios in their cells if they have a personal radio. They may decorate their cells with personal mementos, family photographs, *etc.* These privileges are denied to the male prisoners.

The applicants fail to see any significant differences between The Maze and Armagh prisons which could justify such a startling difference in treatment.II.

Complaints

General complaints made by all four applicants

The applicants have submitted that they are, jointly and severally, victims of violations of Articles 3, 6, 8, 9, 10, 11, 13 and 14 of the Convention.Article 3

The applicants submit that the regime under which they are detained, as described above, constitutes an inhuman and degrading system of treatment. They submit that the official response to their ac-

tions has been excessive and wholly disproportionate to their refusal to wear prison uniform.

Moreover, they complain that, taken *separately*, the system of continuous sanctions under the Prison Rules; the imposition of isolation punishment or solitary confinement and the imposition of collective punishments constitute inhuman and degrading *punishment.* Finally, they complain that they are victims of a general administrative practice in breach of Article 3.Article 6

The applicants rely on the decision of the European Court of Human Rights in Engel and Others.9 They submit that Article 6***183** applies to the process of adjudication and application of punishment by the Governor under the Prison Rules which constitutes in effect the determination of a criminal charge.Article 8

The applicants complain in this regard of the 'slopping out' procedure, washing and using toilet facilities in the view of prison officers, use of chamber pots in their cells within sight of their cell mates. They have also complained of the restrictions imposed on visits (one per month) and the requirement that they wear prison uniform on such a visit. The applicants finally complain of the restrictions on their correspondence as regards both incoming and outgoing mail and limitations on writing facilities.Article 9

The applicants allege that the requirement to wear a prison uniform and to work, despite their deeply held beliefs, violates their freedom of belief and conscience.Article 10

The applicants also complain of the restriction on their freedom of correspondence under this head. In addition, they submit that the total denial of access to radio, television, or films or literature of any sort constitutes a violation of their freedom of expression.Article 11

The applicants submit that the denial of association with other prisoners violates this provision.Article 13

They additionally claim that they have lacked and continue to lack an effective remedy before a national tribunal contrary to this provision.Article 14

The applicants claim that they are victims of discrimination as regards their treatment,

- (i) on grounds of their political beliefs
- (ii) on grounds of sex, in that their treatment is more severe than that of female protesting prisoners at present serving sentences in Armagh Prison.

Separate complaints brought by individual applicants Article 3

1.The applicants Hunter and Nugent state that the imposition of a restricted (No. 1 'bread-and-water' diet) constitutes inhuman and degrading punishment.***184**

2.The applicants Campbell and Hunter claim that their punishment of solitary confinement (served in the punishment block) on 19 December 1977 in the case of Campbell and 19 April 1978 in the case of Hunter for possession of cigarettes was a wholly disproportionate sanction for the offence involved and consequently inhuman punishment.

3.The applicants McFeeley and Nugent allege that from September 1976 to May 1977 (in the case of Nugent) and February to May 1977 (in the case of McFeeley) they were denied the use of toilet facilities during the day-time.Article 8

The applicant Campbell complains separately of a violation of this provision in that communications between him and his solicitor were interfered with and that notes intended for his solicitor in connection with the present application were confiscated.

The applicant Hunter complains that he has been refused family mementos and photographs forwarded to him for placing in his cell. He submits that such an interference was disproportionate and unjustifiable.Article 9

The applicant McFeeley complains that while he was subject to removal from association under rule 24 in March 1978 he was refused permission to attend Sunday mass. He complains that this constitutes an interference with his right to practice his religion.Article 18

The applicant McFeeley complains separately of the periods of isolation to which he was subjected without adjudication. He states that these punishments were restrictions on his rights under Articles 8, 9, 10 and 11 for purposes other than prescribed by paragraph (2) of these provisions, namely, to break down his will and resistance and to force him to act against his conscience and beliefs.

The Law

1.The Commission proposes to examine the respondent Government's objections to the admissibility of the application in the following order:

- a. that the application is an abuse of the right of petition;
- b. that the applicants are not victims within the meaning of Article 25 of the Convention;
- c. that the applicants have not exhausted their domestic remedies as required by Article 26;
- d. that the application should be dismissed on the basis of the 'six months' rule';***185**
- e. that the complaints under the different individual Articles raised are either manifestly ill-founded or incompatible with the provisions of the Convention.

As to abuse of the right of petition

2.The respondent Government submits, inter alia, that the application is inspired by motives of publicity and propaganda whose purpose is to pressurise the Government to re-introduce special category status. The Government refers in this respect to detailed press coverage that the application received both before registration and after the Commission's decision to communicate it for observations. Moreover, it is asserted that the applicants are only seeking to escape the consequences of their sentences, and are deliberately creating the conditions that form the basis of their complaint to the Commission.The applicants reply, inter alia, that such publicity that occurred was not sought after.

3.The Commission observes that whether or not an application is abusive under the Convention depends on the particular circumstances of the case. Furthermore, although under the Commission's Rules of Procedure10 the case files are confidential it has to be accepted that certain controversial applications will give rise to publicity and perhaps propaganda for which the applicant cannot be held responsible.

4.In the present case, the Commission notes that there was substantial press coverage. However it recalls its statement in the *Lawless* case11 that— the fact that the application was inspired by motives of publicity and political propaganda, even if established, would not by itself necessarily have the consequence that the application was an abuse of the right of petition.In such a situation a finding of abuse might be made if it appeared that the application was clearly unsupported or outside the scope of the Convention.The Commission does not find this to be the case here. Moreover, the case file does not establish that the applicants or their representatives sought to capitalise on or exploit the present proceedings for political or propaganda purposes. Finally, the Commission considers that the claims made by the respondent Government that the applicants are deliberately creating the conditions

about which they complain and are merely seeking to escape the consequences of their sentences fall more appropriately to be examined under the remaining grounds of admissibility contained in Article 27 (2).***186**

As to whether the applicants are 'victims' within the meaning of Article 25 (1)

5.The respondent Government submits that the applicants are complaining about the inevitable consequences of their own actions and therefore are not victims 'of a violation by one of the *High Contracting Parties* …" (emphasis added) within the meaning of Article 25 (1).

6.However, the Commission observes that the applicants are complaining about periodic disciplinary punishments that they have been awarded because of their refusal to wear prison uniform and, inter alia, their conditions of detention. It is clear from the observations of the parties that the applicants are directly affected by the disciplinary punishments and can therefore claim to be 'victims' within the meaning of Article 25 (1) of the Convention.

As to exhaustion of domestic remedies

7.The respondent Government submits that the applicants could have sought a remedy before the Northern Ireland courts. With respect to their complaints concerning adjudications and disciplinary awards, reference is made to a decision of the Court of Appeal12 where it was held that the proceedings of a board of visitors resulting in disciplinary awards are subject to judicial review and may be set aside if not conducted in accordance with the principles of natural justice. It is further submitted that the applicants have not sought to raise certain complaints with the board of visitors or the Secretary of State for Northern Ireland. It is not suggested that these procedures would provide a remedy in respect of complaints concerning the lawful imposition of sanctions provided for in the Prison Rules. However, it is submitted that they constitute an effective remedy as regards allegations of improper or illegal behaviour.

8.The applicants reply in the alternative that: (1) because they are complaining of an administrative practice in breach of the Convention, they are absolved from the requirement under Article 26; (2) that they have had full recourse to both the board of visitors and the Northern Ireland Office (*i.e.*, the Secretary of State); (3) that in any event no adequate and effective remedies exist in domestic law, as regards their complaints. They submit that the recent decision of the Court of Appeal in the St. Germain case13 cannot apply to them, firstly, because it only concerns review of disciplinary awards by the board of visitors, and secondly, because it was not a remedy available to them at the time they lodged their application. Finally, they state that an opinion of***187** Queen's Counsel at the Northern Ireland Bar which they have submitted was obtained and they were informed that their prison conditions would not ground a remedy under domestic law.

9.Under Article 26 of the Convention the Commission may only deal with a complaint 'after all domestic remedies have been exhausted, according to the generally recognised rules of international law …' The Commission recalls its previous jurisprudence that in order to comply with the requirements of Article 26 an applicant is obliged to make 'normal use' of remedies 'likely to be effective and adequate' to remedy the matters of which he complains.14 The European Court of Human Rights has also held that 'the rule of exhaustion of domestic remedies demands the use only of such remedies as … are sufficient that is to say, capable of providing redress for their complaints'.15 Moreover, the Court in the same case further held that the applicants were not obliged to make use of a remedy which, according to the 'settled legal opinion' existing at the relevant time, was thought to be inadmissible.16 In addition, the Commission notes that it has previously considered a petition to the Home Secretary or a complaint to the board of visitors to be a remedy capable of providing adequate redress in re-

spect of complaints concerned with matters of prison administration such as, for example, complaints concerning general conditions of detention.

10.The Commission notes that the facts which give rise to the applicants' complaints under the various Articles invoked concern, firstly, the continuous imposition of disciplinary sanctions by the Governor or the Assistant or Deputy Governor; secondly, their general conditions of detention and their treatment by the prison authorities; thirdly, separate complaints raised by each applicant concerning particular events or features of their prison regime. The Commission proposes to examine whether the requirement of exhaustion of domestic remedies has been fulfilled in respect of each of the above categories of complaint.i.

Imposition of disciplinary sanctions by prison Governor

11.The respondent Government has submitted that it would have been open to the applicants to seek judicial review of their adjudications by seeking an order of certiorari. However, the Commission observes that the case invoked by the Government in support of the above proposition, the St. Germain case,17 only concerns judicial review of a board of visitors' disciplinary award on the basis that the principles of natural justice have not been***188** observed. Moreover, it notes that two of the judges of the Court of Appeal18 expressed reservations as to whether certiorari lies in respect of awards as in the present case by a prison Governor. The Commission further notes the serious doubt as to whether this remedy could be considered open to the applicants according to 'settled legal opinion' at the time of the lodging of the application. Finally, it would observe that in any event even if the remedy was available to the applicants it could only be considered sufficient to redress their complaint under Article 6 of the Convention concerning the procedural propriety of the adjudications and not their complaint under Article 3 as regards the cumulative severity of the punishments awarded.

12.The Commission is of the opinion, having regard to these considerations, that the remedy of seeking an order of certiorari from the Northern Ireland courts cannot be considered an effective one in respect of their complaint.

13.The Commission notes that the Government in its observations has not claimed that a complaint to the board of visitors or a petition to the Secretary of State for Northern Ireland concerning the *lawful imposition* of sanctions constitutes a remedy to be exhausted in respect of this complaint. In this regard, it has not been claimed by the applicants that the punishments awarded have been illegal under domestic law.ii.

General prison conditions and treatment by the prison authorities

14.The question arises under this head whether there exists any remedy before the Northern Ireland courts in respect of their prison conditions and treatment by the prison authorities, *i.e.*, concerning loss of all privileges, remission, awards of cellular confinement and the general conditions and treatment described above.19

15.The Commission notes that, apart from the St. Germain case20 considered above, the Government has not submitted any legal authority in support of its contention that such a remedy exists. Moreover, it observes that the applicants were advised by Queen's Counsel at the Northern Ireland Bar that their circumstances and conditions would not ground a legal remedy.

16.The Commission recalls that in X. v. United Kingdom,21 it considered whether a complaint concerning general conditions of detention could be the subject of an action for damages under the law of tort where there was loss of amenities or physical discomfort***189** but no manifest physical injury or illness. After a consideration of the submissions of the parties as to the existing legal authorities the Commission stated it was not satisfied that22 in the present state of the English law of tort the applicant

could reasonably expect to recover damages on proof of his allegations unless there were to be a change or at least a material development in the existing case law.

17.In the present case the Commission sees no reason to change its view and thus affirms its opinion that, in respect of this complaint, no adequate or effective remedy exists before the Northern Ireland courts.

18.The Commission recalls, at this point, that it normally considers complaints to the board of visitors and the Secretary of State for Northern Ireland to be capable of providing redress in respect of allegations concerning matters of general prison administration and thus remedies to be exhausted under Article 26 of the Convention. It notes, however, that the question of the effectiveness of these administrative remedies is raised by the applicants under Article 13. Notwithstanding and without prejudice to the issue raised under Article 13, it appears from the information supplied by the respondent Government concerning the applicants' *board forms* (*i.e.*, letters of complaint) to the Northern Ireland Office that they raised their general complaints concerning prison conditions in full. All four applicants complained about their disciplinary punishments, conditions of their cells, lack of exercise, quality of food, restrictions on letters, removal of furniture, degrading toilet procedures and other matters relating to their general conditions. Replies from the Northern Ireland Office were sent on 4 August 1978. Consequently the Commission considers that they have raised in substance their complaints under the various provisions of the Convention invoked before the competent administrative authorities.iii.

Separate complaints made by individual applicants

19.With regard to the separate complaints of each of the applicants, the Commission reiterates its view that remedies before the Northern Ireland courts have not been shown to be 'capable of providing redress' in respect of complaints concerning prison conditions, where no physical injury is being alleged. It therefore remains to be examined, again without prejudice to the issue under Article 13 concerning the effectiveness of the administrative remedies to examine the totality of their complaints, whether administrative remedies were availed of in each case. The Commission observes that the applicants are not alleging an administrative practice in respect of their separate complaints. ***190**

20.The following conclusions emerge from the information provided by the Government and referred to above, namely that:

- —the applicant Hunter raised his complaints concerning the No. 1 diet, solitary confinement and the refusal of family mementos and photographs with the Northern Ireland Office on 14 July 1978;
- —the applicant Nugent raised his separate complaint concerning the No. 1 diet with the Northern Ireland Office in a letter dated 22 June 1978; however, it does not appear that he complained either to the board of visitors or the Northern Ireland Office in respect of his allegation that he was denied access to toilet facilities during the daytime. It follows that this complaint must be rejected for failure to exhaust domestic remedies;
- —the applicant Campbell raised his separate complaint with the Northern Ireland Office concerning the confiscation of notes intended for his solicitor in a letter dated 5 July 1978. He did not, however, complain either to the Northern Ireland Office or the board of visitors about the award of solitary confinement made in December 1977. However, as noted above,23 the Commission does not consider that a petition to the Northern Ireland Office concerning the lawful imposition of a particular punishment constitutes an effect-

ive remedy to be exhausted;

- —the applicant McFeeley in a letter dated 9 June 1978 complained to the Northern Ireland Office about isolation punishment. However, his allegation concerning denial of the use of toilet facilities during the daytime was not the subject of a complaint either to the board of visitors or to the Northern Ireland Office, and accordingly must be dismissed for failure to exhaust domestic remedies. Nor has he raised his separate complaint that he was refused permission to attend mass while undergoing solitary confinement. In this regard the Commission is of the opinion that it would have been open to the applicant to raise this complaint with either the board of visitors or the Northern Ireland Office with a view to establishing the legality of such action in respect of a prisoner who has been removed from association under rule 24 of the Prison Rules. Since the Commission considers that such a petition would constitute an effective remedy in those circumstances, this complaint must also be rejected for failure to exhaust domestic remedies.

21.The Commission therefore concludes that, with the exception of the above-mentioned separate complaints of applicants Nugent and McFeeley, the applicants' complaints concerning their prison conditions and treatment by the prison authorities including adjudications and disciplinary awards cannot be dismissed for failure to exhaust domestic remedies.***191** It follows, therefore, that it is not necessary at this stage to examine the claim that the applicants are victims of an administrative practice in breach of Article 3 of the Convention.

As to the six months rule

22.The respondent Government submits that those events which took place more than six months prior to the lodging of the application should be dismissed on the basis of the six months rule contained in Article 26. The applicants, on the other hand, submit that the six months rule is inapplicable since the matters about which they complain represent a 'continuing situation'.

23.The Commission recalls its case-law according to which where there is a 'permanent state of affairs which is still continuing', the question of the six months rule 'could arise only after the state of affairs has ceased to exist'.24

24.The Commission is of the opinion that the applicants' general complaints under the various Articles invoked concerning their prison conditions and treatment by the prison authorities, including adjudications and disciplinary punishments, are complaints which concern 'a permanent state of affairs which is still continuing'. This is seen most clearly in respect of the disciplinary awards made at first every 14 days and subsequently every 28 days. Similarly, the complaint concerning prison conditions and treatment is of a continuing and developing nature in the sense that the applicants are allegedly subject to those conditions every day of their detention.

25.With respect to the remaining separate complaints made by the applicants the Commission notes that they were the subject of petitions to the Northern Ireland Office which replied to each of the applicants in letters dated 4 August 1978 and thus within the six month period.

26.The Commission thus concludes that the applicants' complaints as above cannot be dismissed on the basis of the six months' rule.

On the alleged violation of Article 9

27.The applicants complain that they are required to wear prison uniform and engage in prison work contrary to their beliefs and conscience. They consider that they are 'political prisoners' or 'prisoners of war' and should not be subjected to the same prison regime as other prisoners convicted of 'ordinary' criminal offences.

28.Article 9 states as follows: 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or***192** belief and freedom, either alone or in

community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance …

29.The respondent Government submits that the term 'belief' in Article 9 (1) relates to the holding of spiritual or philosophical convictions which have an identifiable formal content. It does not extend to mere 'opinions' or deeply held feelings about certain matters.

30.The Commission considers that the applicants are seeking to derive from Article 9 the right to a 'special category status' whereby they are entitled to wear their own clothes and be relieved from the requirement of prison work and, in general, be treated in a way which distinguishes them from other prisoners convicted of criminal offences by the ordinary courts. The Commission is of the opinion that the right to such preferential status for a certain category of prisoner is not amongst the rights guaranteed by the Convention or by Article 9 in particular. Moreover, it considers that the freedom to manifest religion or belief 'in practice' as contained in this provision cannot be interpreted to include a right for the applicants to wear their own clothes in prison.

31.Accordingly, it considers that this complaint must be rejected under Article 27 (2) as incompatible ratione materiae with the provisions of the Convention.

On the alleged violation of Article 3

32.The Commission notes that the applicants' complaints under Article 3 fall into the following four categories:

- (i) they complain, jointly and severally, that the combination of disciplinary awards and conditions of detention in the H-blocks constitutes an inhuman and degrading system of treatment;
- (ii) they also complain, jointly and severally that, taken *separately*, the system of continuous and cumulative sanctions, the imposition of 'isolation' punishment and collective punishments constitutes inhuman and degrading punishment;
- (iii) they further complain that the combination of disciplinary punishments and their conditions of detention amounts to an administrative practice of inhuman and degrading treatment in breach of Article 3;
- (iv) The applicants Hunter and Nugent complain separately of certain features of the prison regime. Thus both state that the imposition of a restricted diet (No. 1 diet) amounts to inhuman and degrading punishment. The applicant Hunter complains that an award of 'isolation' punishment on 19 April 1978 was a disproportionate sanction for the offence involved and thus amounted to inhuman punishment.***193**

33.Article 3 of the Convention provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

34.The respondent Government submits that the above complaints are part of a propaganda campaign at present being waged by the IRA in order to pressurise the Government to grant 'special category status' to their members serving prison sentences in Northern Ireland. As regards their complaint that their prison conditions constitute inhuman and degrading treatment it submits that there is no basis in fact for the applicants' allegations. It states that most of their complaints are the direct consequence of their own acts. For example, the lack of furniture is the result of its having been broken by prisoners. Further, the prison facilities are modern but the applicants have deliberately smashed the windows in their cells. Moreover, any sanitary conditions are directly attributable to their actions in defiling their cells thereby necessitating the use of disinfectant. The Government further states that they are subject to proper medical supervision and entitled under the Prison Rules to one hour's exercise every day which they can take in

prison clothing or prison underwear or without clothing. Furthermore, since March 1978 they have chosen not to leave their cells to use the dining room, toilets or washroom or to take exercise. In such circumstances it is submitted that this complaint be dismissed as manifestly ill-founded.

35.With respect to the various complaints of inhuman and degrading punishment the Government submits with reference to the decision of the Court in the Tyrer case,25 that all of the surrounding circumstances have to be taken into account, especially the applicants' organised protest campaign, in making an evaluation. It is further argued that the awards of 'isolation' punishment and the No. 1 diet fall short of the level of treatment prohibited by Article 3.

36.The applicants, on the other hand, maintain that their application does not derive from any campaign nor should it be identified with one. They state that it concerns the rights of prisoners who refuse to conform to the requirements of the prison rules to wear prison uniform and to work and the appropriateness of the prison authorities' response to such refusal under the Convention. They claim that the deterioration in their situation, culminating in the events of March 1978, flows directly from the excessive response of the authorities to their protest in the form of a consistent regime of severe and humiliating punishments over a long period.

37.In this regard they point out that they have been subjected to and are still being subjected to, cumulatively severe disciplinary punishments from the beginning of their sentences. They have been***194** naked because the prison authorities refused to provide them with alternative clothing. They have been in constant confinement in their cells. There has been a deprivation of association with others and a complete embargo on reading matter or other access to the media, as well as loss of access to recreational and educational opportunities. Moreover, since 12 November 1976 the opportunity of exercising or leaving their cells covered in a blanket was with-drawn from them. As a result they were placed in a position of either wearing the uniform which was in conscience unacceptable to them, or leaving their cells naked, which they considered degrading.

38.The Commission observes that, although there is disagreement between the parties on various questions of fact, it is not in dispute that the applicants were awarded disciplinary punishments by the Deputy or Assistant Governor at intervals of 14 and subsequently 28 days. As the applicants consistently refuse to conform to the Prison Rules, they have been continuously subject to a regime of punishments consisting of substantial loss of remission, loss of all privileges (including association with other prisoners and access to educational and recreation facilities), and regular periods of cellular confinement.

39.The Commission recalls in the first place the elaboration of the concept of inhuman or degrading treatment or punishment by both the Commission and the European Court of Human Rights.

40.The Commission has held in the Greek Case26 and in Ireland v. United Kingdom27 that:

- —the notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical;
- —treatment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his own will or conscience.

However, as underlined by the European Court of Human Rights in Ireland v. United Kingdom28 — ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances

of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.

41.The further elements in Article 3, namely, inhuman and degrading punishment have been considered by the Court in the Tyrer Case.29 The Court stated that30 'for a punishment to be “degrading” and in breach of Article 3, the humiliation or debasement involved must attain a particular level.' Once more, the assessment***195** is relative, depending on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution.31 The Court further considered that 'the suffering occasioned must attain a particular level before a punishment can be classified as “inhuman” within the meaning of Article 3'.32

42.It is clear that the applicants, along with a substantial number of other prisoners in the Maze Prison, Northern Ireland, consider themselves to be 'political prisoners' and different from ordinary criminals in the sense that the crimes which they committed were 'politically motivated' and that they were arrested, tried and convicted under special emergency legislation. They seek a 'special category status' which would entitle them, inter alia, to wear their own clothes and to certain additional privileges, in recognition of the 'political' nature of their offences. Furthermore, the applicants consider that their protest is a justified one and interpret the insistence of the prison authorities that they wear prison uniform and engage in work as a form of systematic coercion. It must be observed that the process of action and reaction between the parties, which has carried the dispute to such extremes, stems directly from the applicants' belief in the rightness of their cause and no doubt their perception of the propaganda value of such a stand, in terms of increasing support for the IRA among the out-side community in Northern Ireland.

43.The Commission, however, must observe that the applicants are seeking to achieve a status of political prisoner which they are not entitled to under national law or under the Convention. Furthermore, although this point has not been argued by the parties in their observations, the Commission does not consider that such an entitlement in the present context can be derived from existing norms of international law. In this regard the Commission recalls its opinion that the applicants' convictions are not protected by the Convention or Article 9 in particular, and that their complaint under this provision has been rejected as incompatible ratione materiae. It follows from this that their protest cannot derive any legitimacy or justification from the Convention and cannot be attributed to any positive action on behalf of the respondent Government. Thus the Commission is of the view that the undoubtedly harsh conditions of detention, which developed from the applicants' decision not to wear prison uniform or use the toilet and washing facilities provided and other self-imposed deprivations associated with their protest, cannot engage the responsibility of the respondent Government.

44.It must also be considered whether the Convention imposes on the Government an obligation to accept the demands of the***196** applicants not to wear prison uniform or to work in the face of a dispute which continues to deteriorate in such a drastic way to the detriment of everyone concerned. However, the Commission does not consider that such an obligation exists in the present case.

45.In reaching this view the Commission had regard to the fact that the protest campaign was designed and co-ordinated by the prisoners to create the maximum publicity and enlist public sympathy and support for their political aims. That such a strategy involved a self-inflicted debasement and humiliation to an almost sub-human degree must be taken into account. Moreover, the evidence in the case-file concerning the medical history of the applicants and the sanitary and health measures undertaken by the prison authorities do not indicate that the situation has been allowed to deteriorate to the point where the lives of the applicants have been put in jeopardy. The Commission would add

finally, that it does not consider there to be anything inherently degrading or objectionable about the requirement to wear a prison uniform or to work. In this regard it notes that, as indicated in the *Gardiner Report*,33 the withdrawal of special category status in 1976 was motivated by such considerations as the need to treat prisoners on the same footing, to assert disciplinary control and to ameliorate conditions for rehabilitation work.

46.On the other hand, the Commission considers that in such a situation, the State is not absolved from its obligation under the Convention and Article 3 in particular, because prisoners are engaged in what is regarded as an unlawful challenge to the authority of the prison administration. Although short of an obligation to accept the applicants' demands in the sense described above, the Convention requires that the prison authorities, with due regard to the ordinary and reasonable requirements of imprisonment, exercise their custodial authority to safeguard the health and well-being of all prisoners including those engaged in protest in so far as that may be possible in the circumstances. Such a requirement makes it necessary for the prison authorities to keep under constant review their reaction to recalcitrant prisoners engaged in a developing and protracted protest.34

Disciplinary punishments and conditions of detention

47.As a consequence of the applicants' persistent breach of the prison rules in refusing to wear prison uniform or to work, they are awarded disciplinary punishments by the Assistant or Deputy Governor every 28 days. The punishments consist of 28 days' loss of remission, 28 days' loss of privileges, 28 days' loss of***197** earnings.35 Before 6 October 1978 they were also awarded three days' cellular confinement.The Commission considers, firstly, that an award of loss of remission for a disciplinary offence does not constitute inhuman or degrading treatment in the sense developed above. Moreover, it notes that lost remission may be restored by the prison authorities where a prisoner conforms to the prison rules and after a period of good conduct.

48.As the Government and the applicants have explained, the loss of privileges means that they are segregated from the rest of the prison community and are not permitted to associate freely with other prisoners. It also means that they are not entitled, inter alia, to additional visits, or to a radio or newspapers or to avail themselves of educational facilities. It is in this regard that the applicants' allegations that they are confined to their cells, on a permanent basis, arise.

49.The Commission has previously considered numerous applications concerning solitary confinement or 'isolation' punishment. It has said that complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. On the other hand a distinction has been drawn between this and removal from association with other prisoners for security, disciplinary or protective reasons. The Commission would not normally consider that this form of segregation from the prison community amounts to inhuman treatment or punishment. In making an assessment in a given case, regard must be had to the surrounding circumstances including the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned.36

50.The Commission must observe, however, in the present case, that the form of segregation the applicants are subject to does not amount to solitary confinement or to total social isolation as such. It is more correctly characterised as a form of removal from association with other prisoners. Each of the applicants shares a cell with another prisoner. Moreover, it is still open to the applicants, as is confirmed by the submissions of both parties, to leave their cells for certain purposes, *e.g.* to take one hour's exercise every day in the open air, to receive visits from lawyers, to attend religious services or to visit the medical or welfare officer, to

visit the toilet facilities, to take a shower twice weekly, to visit the library and to collect meals from the dining room.

51.The applicants, on the other hand, argue that in order to***198** leave their cells for most of the above reasons they would have to go naked since, as a matter of prison policy, the Governor denies them the use of their blanket outside the cell. The Commission notes that since March 1978 and the intensification of the protest, the applicants have chosen to remain confined to their cells since the options available to them, *i.e.* to go naked or wear prison clothes, are considered degrading. In the Commission's view, a serious question would arise under Article 3 if the possibility of leaving their cell naked was the only option open to them. This is not the case here. They may leave their cells for the above reasons, dressed in either prison uniform or prison underwear. The Commission does not accept, no matter how sincerely held the applicants' beliefs are, that to do so is in any way degrading. In fact it notes that the applicants are prepared to compromise as regards attendance at mass and visits from lawyers or relatives. Accordingly, the fact that they choose not to avail themselves of the above opportunities to leave their cells is plainly their own responsibility.

52.The Commission observes that every 14 days, from the beginning of their sentences, the applicants were awarded three days' cellular confinement. During this period they were confined to their cells, although they were still entitled one hour's exercise in the open air every day. Their mattresses and bedding were removed during the day-time but returned at night. The Commission notes that this punishment was served in their own cells in the company of a cell mate and not in the punishment block, and that its duration was limited to three out of every 14 days. Moreover, as a regular punishment for the applicants' protest it ended on 6 October 1978. The Commission does not doubt the cumulative harshness of this punishment over a long period but again it must observe that, given the actual conditions in which the punishment was served and its length, the Commission is of the opinion that it did not attain a sufficient level of severity to raise an issue under Article 3.

53.The applicants' accommodation consists, under normal circumstances, of a small cell equipped with bunk beds, writing table and chairs, a small cabinet to hold their personal items and an ordinary notice board attached to the wall. It has a window of adequate size which allows enough sunlight to enter and provides sufficient ventilation. On the basis of photographic evidence submitted by the Government and not contradicted by the applicants, the Commission is satisfied that prior to the intensification of the protest in March 1978, cell conditions were satisfactory.It is, however, clear that once the applicants entered into the phase of protest, known as the 'dirty protest', after March 1978, their living conditions deteriorated drastically. The applicants, inter alia, refused to use the washing or toilet facilities provided***199** outside their cells and smeared the cell walls with faeces. The cells are now without furniture except for plastic water containers and basins for toilet functions. Cell furniture has been removed because the applicants and other prisoners involved in the protest have broken it up and refused to give assurances that such incidents will not occur again. They have also discarded waste food in the corners of their cells, urinated on it and used it to defile their cell walls. As a result of their decision not to use the toilet facilities they have to go to the toilet in the presence of their cell companion.

54.The Commission has no doubt that the above described conditions are 'inhuman and degrading' within the meaning ascribed to them under the Convention. However, it must observe that these conditions are self-imposed by the applicants as part of their protest for 'special category status' and, were they motivated to improve them, could be eliminated almost immediately.

55.The applicants further complain that they are being denied exercise and have been so far for consid-

erable periods of time. The Commission has paid particular regard to this complaint since it considers that a denial of exercise constitutes a serious danger to the physical and mental well-being of prisoners and would raise a serious issue under Article 3, if established. However, once more it must observe that the applicants' claim is not correct. They are in fact entitled, under rule 58 of the Prison Rules, to one hour's exercise in the open air every day. They can exercise either in prison uniform or prison underwear or naked. While it is true that the governor does not permit them to exercise covered in a blanket, it cannot be deduced that exercise is being denied them. In reality they choose not to take advantage of the opportunities for exercise rather than compromise their protest. A similar situation exists in relation to use of the library facilities which may be availed of by the applicants in either prison uniform, prison under-wear or naked. It follows, therefore, that they alone must bear responsibility for the choice they have made.

56.It is clear from the submissions of the parties that the applicants may receive attention from prison medical staff including qualified doctors either dressed in prison uniform or underwear or naked. They are not permitted to cover themselves with either a blanket or a towel if they choose not to wear prison uniform. To receive medical attention from outside medical specialists they are required to wear prison clothing.The Commission is satisfied with the general provision of medical care in The Maze. In particular it notes that prisoners may seek medical attention in respect of any complaint during the early morning 'request period'. At other times, they can ask to see the hospital officer in the prison block, who will call for a doctor if this appears to be necessary. It also notes that they must be***200** certified as fit by the medical officer before a period of 'cellular confinement' is awarded. Moreover, the Commission has examined summaries of the applicants' medical records compiled while in prison, and is satisfied that their medical complaints received the normal and proper attention. The records reveal that on several occasions the applicants were unco-operative with the medical authorities, either refusing to wash before radiological investigations which, as a result, were not carried out, or refusing to attend for specialist examination (perhaps because of the requirement that they wear a uniform). The Commission must again conclude that any inadequacy in the medical attention they received or are receiving as a result of such behaviour is attributable to their own actions in furtherance of the protest.

57.The applicants have also complained of the searching procedures they are subject to, in particular the 'strip search', or 'close body search'. This consists of searching the prisoner while he is naked and examining his rectum with the aid of a mirror.

58.The applicants, who state that they do not object to being searched as such, maintain that such a procedure is humiliating and inherently degrading. The Government submit that a 'close body' search is necessary in the particular circumstances which obtain in The Maze Prison in the interests of security.

59.The Commission notes that 'close body' searches of this nature which were introduced in January 1979, take place before and after visits and before prisoners are transferred to a new wing (at intervals of seven to ten days). Such searches take place in the presence of three prison officers and one senior officer. No other prisoners are present. Moreover they do not involve actual physical contact unless the prisoner offers resistance. A metal detector is used to check for metal objects and if the prisoner is suspected of concealing an article in his rectum he is examined by the prison doctor after removal to the cell block.

60.The Commission has taken into consideration the exceptional circumstances in The Maze Prison, in particular the dangerous objects that have been found concealed in the recta of protesting prisoners (such as razor blades, flints, matches, cigarette lighters); the fact that, in the past, protesting prisoners have used such objects for disruptive purposes (*e.g.*, to burn the perspex shields used for window

coverings); the serious risk that concealed letters might identify prison officers as potential assassination targets. In this respect it should be recalled that the campaign of killings being carried on by the Provisional IRA has been directed at the personnel of the prison service in Northern Ireland, eight of whom have been murdered (as of January 1979). It has also considered the manner in which such searches are carried out as described in detail in the Government's observations.

61.The Commission notes that several features of the search***201** procedures (*e.g.*, the presence of a senior officer, use of a mirror to avoid physical contact, medical examination if the prisoner is suspected of concealing something) are designed to reduce the level of humiliation to the prisoner and provide safeguards against abuse. While there can be no doubt that many prisoners find such procedures humiliating the Commission is of the opinion that in the circumstances the level of mental or physical suffering is not such as to amount to inhuman treatment. Similarly, it does not consider that the degree of debasement or humiliation involved, particularly in respect of prisoners who must be aware by reason of their campaign of the substantial security threat posed, reaches the level of severity required for it to amount to degrading treatment.

62.The Commission has next considered to what extent the prison authorities and the Northern Ireland Office have kept detention arrangements and conditions under review in the course of the protest. It notes that the authorities are careful to supervise the sanitary state of each prison block and sees no reasons to disbelieve their submission that a close check is kept on the health of the protesters. The Northern Ireland Prison Department is in receipt of frequent reports on the state of hygiene in each prison block; prisoners are moved from fouled cells at regular intervals; cells are thoroughly cleaned and, if necessary, repainted; external surfaces contaminated by excreta thrown from the cell windows are cleaned daily and food utensils are sterilised after each meal. The Commission further observes that the punishment of cellular confinement has ceased to be awarded after 6 October 1978 and that the prison authorities have been willing to replace furniture in the cells in return for an assurance, which was not forthcoming, that it not be destroyed.

63.However, it must have become clear to the prison authorities after a certain period that the applicants were not prepared to change their attitudes, to take exercise naked or to make use of prison facilities (such as the library or dining room) naked, or to wear prison uniform or underwear to see medical specialists. The result is that the applicants are confined to their cells on a permanent basis in conditions, though self-imposed, which must pose a significant threat to their physical and mental well-being.

64.No doubt the authorities consider that to make concessions to the applicants will result in strengthening their resolve to continue their protest to a successful conclusion. However, the Commission express its concern at the inflexible approach of the State authorities which has been concerned more to punish offenders against prison discipline than to explore ways of resolving such a serious deadlock. Furthermore, the Commission is of the view that, for humanitarian reasons, efforts should have been made by the authorities to ensure that the applicants could avail them-selves of certain facilities such as taking regular exercise in the***202** open air with some form of clothing (other than prison clothing) and making greater use of the prison amenities under similar conditions. At the same time, arrangements should have been made to enable the applicants to consult outside medical specialists even though they were not prepared to wear prison uniform or underwear.

65.Notwithstanding the above, the failure of the authorities in these respects, taking into consideration the magnitude of the institutional problem posed by the protest and the supervisory and sanitary precautions they have adopted to cope with it, cannot lead to the conclusion that the Government is in breach

of its obligations under Article 3.

66.The Commission concludes that, for the reasons elaborated above, the combination of disciplinary punishments and conditions of detention does not reveal, prima facie, inhuman or degrading treatment contrary to Article 3 of the Convention.

Continuous and cumulative sanctions

67.With respect to the separate complaint concerning the imposition of continuous and cumlatively severe disciplinary punishments, the Commission refers to its conclusion, developed above,37 that they do not amount to inhuman and degrading treatment. For the same reasons it does not consider that they constitute inhuman and degrading punishment.

Isolation punishment

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68.All four applicants have at different times been awarded periods of cellular confinement or 'isolation' punishment for disciplinary offences other than refusal to wear prison uniform. Thus the applicant McFeeley was awarded seven days' cellular confinement for disrespect to an officer; three days on 15 May 1978 for threatening a prison officer; 15 days on 15 September 1978 for assaulting a prison officer and another prisoner; 14 days on 5 October 1978 for assault on other prisoners. The applicant Hunter was awarded three days on 19 April 1978 for possession of prohibited articles (tobacco); and three days on 12 June 1978 for disrespect to a prison officer. The applicant Campbell was awarded three days on 19 December 1977 for possession of cigarettes. The applicant Nugent was awarded three days on 14 February 1978 for issuing orders to other prisoners; three days on 29 April 1978 for assault on two prison officers; three days on 10 June 1978 for making false statements.

69.The Commission notes that during periods of cellular confinement mattresses and bedding are removed during the day-time***203** and returned at night. It considers further awards of cellular confinement harsh and open to criticism in the context of the disciplinary punishments already inflicted. However, it notes that the periods awarded were relatively short and occurred at different times throughout the applicants' imprisonment. Again, the punishment can more appropriately be characterised as removal from association as opposed to the form of isolation punishment described above.39 Moreover, it notes that a prisoner has to be certified fit by a medical officer to undergo a period of cellular confinement and is subject to daily medical inspection. The Commission also notes, from the summaries of the applicants' medical records, submitted by the Government, that the applicants' physical or mental health does not appear to be in any particular danger.Taking these factors into account, the Commission is not of the opinion that such punishment attains a sufficiently high level of severity to amount to inhuman or degrading punishment.

Collective punishments

70.The applicants complain in this respect of the removal of furniture from their cells and the withdrawal of religious literature and toothpaste. They state that the action taken by the authorities constitutes a collective punishment.

71.The Commission observes that furniture was removed from H-block 5 (where the applicants were accommodated) in June 1978 after it had been destroyed by the inmates. It further notes that each prisoner has been asked on several occasions for an assurance that the cell furniture will not be damaged as a condition for its return. It appears that the applicants have not been prepared to give such an assurance. The Commission does not accept on the basis of the evidence in the case file that return of furniture was dependent on the applicants' wearing the prison uniform. It further appears that religious literature and toothpaste were withdrawn because of their misuse by prisoners as part of their protest. In these circumstances the Commission considers that this complaint must be rejected as manifestly ill-founded.

On the alleged administrative practice

72.The Commission has concluded that the facts as presented by the parties do not reveal inhuman and degrading treatment or punishment in breach of Article 3. It follows, therefore that the existence of an administrative practice cannot be established.

Separate complaints of Hunter, Nugent and Campbell

73.Both the applicants Hunter and Nugent complain of the imposition on them of the No. 1 diet. The applicant Hunter was awarded three days of the No. 1 diet on 19 April 1978 and a***204** further three days on 12 June 1978 for disciplinary offences. The applicant Nugent was awarded three days of the No. 1 diet on 24 April 1978 for assault on a prison officer.The applicants Hunter and Campbell further complain that awards of three days' cellular confinement or isolation punishment on 19 April 1978 and 19 December 1977 respectively for possession of tobacco were disproportionate sanctions for the offences involved.

74.The Commission observes that the No. 1 diet is set out in the Schedule to the Prison Rules (Northern Ireland) 1954 and, when awarded for a period of three days, consists of the following: '12 ozs. bread and 8 ozs. potatoes per diem with water and 1 pint of tea morning and night and 1 pint soup mid-day'.

75.The Commission notes that since October 1978 the above diet is no longer employed as a disciplinary award, although it does not appear to have been abolished as such. The Commission considers that a restricted diet such as the above, coupled with an award of cellular confinement is a stringent and wholly undesirable form of punishment. However, in the present case it notes that it was employed for short periods in respect of both complainants and is thus of the opinion that, though harsh, does not amount to a sufficiently rigorous punishment where the level of physical or mental suffering or the degree of humiliation involved amounts to inhuman or degrading punishment in breach of Article 3.

76.The Commission is of the same opinion as regards applicant Hunter's and applicant Campbell's additional complaints concerning the disproportionate nature of the punishment awarded on 19 April 1978.

Conclusion

77.The Commission therefore concludes by a majority that an examination of both the applicants' joint and several complaints and the complaints submitted separately by applicants Hunter, Nugent and Campbell does not disclose the appearance of inhuman or degrading treatment or punishment in breach of Article 3, and must therefore be dismissed as manifestly ill-founded under Article 27 (2) of the Convention.

On the alleged violation of Article 8

78.The applicants complain under this provision of unjustified and disproportionate interference with their right to respect for their private and family lives and their correspondence. The applicant Hunter makes a separate complaint of interference with his right to respect for family life.Article 8 provides as follows:

1.Everyone has the right to respect for his private and family life, his home and his correspondence.

2.There shall be no interference by a public authority with the***205** exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Privacy

79.The applicants have complained in particular of the following matters as constituting an interference with their *private life.*(i)The daily procedure of

emptying their chamber pot or 'slopping out'. This involved walking to a toilet receptacle either naked or covered only in a towel or blanket.(ii)Allegations of constant surveillance by prison warders when using the toilet facilities.(iii)The 'strip' search procedure before and after visits and regular searching when the applicants sought to use the toilet facilities.(iv)The removal from association from the rest of the prison community. In this respect it is submitted that their rights to association are protected under the right to privacy.(v)The use of a chamber pot in the cell during both day and night and thus within the sight of a cell companion.

80.The Commission considers that the facts complained of in the first and last of these complaints (*i.e.,* the slopping out procedures and the use of the chamber pot in the cell) are attributable to the actions of the applicants themselves in the furtherance of their protest. It must again be observed that if they had to slop out either naked or covered only in a blanket or towel, it was because of their persistent refusal to wear prison clothes. In the same way, the use of a chamber pot in the cell both day and night is the direct result of their decision in early 1978 not to avail themselves of the toilet facilities and to intensify their campaign. Accordingly, in these respects the Commission does not find that there has been an interference with respect for their private lives.

81.As regards the complaints under the heading concerning surveillance by prison warders and searching procedures, the Commission must have regard to the real security threat posed by such a large-scale protest campaign. The attempts to conceal dangerous objects and the previous disruptive behaviour of the prisoners as noted above40 make it inevitable that close surveillance and thorough searching take place. The Commission thus finds that these procedures, although an interference with their right to respect for private life may be justified as being in accordance with the law (*i.e.* the Prison Rules) and 'necessary in a democratic society … for the prevention of disorder or crime' within the meaning of Article 8 (2).***206**

82.Finally, in so far as the applicants complain that they are not permitted to associate with other prisoners, the Commission observes that it has previously been held in X. v. Iceland41 , that the concept of private life under the Convention comprises 'to a certain degree the right to establish and to develop relationships with other human beings, especially in the emotional field of the development of one's own personality'. The Commission considers that this element in the concept of privacy extends to the sphere of imprisonment and that their removal from association thus constitutes an interference with their right to privacy in this respect. However, it is clear that removal from association was a consequence of the disciplinary punishment of loss of privileges, imposed at regular periods with a view to bringing their protest to an end. The Commission therefore considers that the interference, which is in accordance with the law,42 is justified under Article 8 (2) as 'necessary in a democratic society … for the prevention of disorder'.

83.The Commission has also considered, ex officio, whether the requirement that the applicants wear prison uniform constitutes an interference with their right to respect for their private lives. The Commission considers that such a requirement constitutes an interference with respect for private life under Article 8 (1). However, it observes that the purpose of a prison uniform is to facilitate identification of a prisoner with a view to preventing his escape or securing re-capture in the event of an escape, and secondly, to enable the prison authorities to distinguish between the prison community and visitors dressed in ordinary clothes. The requirement to wear the clothing provided by the prison authorities is contained in rule 63 of the Prison Rules (Northern Ireland) 1954. The Commission thus finds that it is justified under Article 8 (2) as 'necessary in a democratic society in the interests of … public safety [and] … for the prevention of … crime'.

Family life

84.The applicants further complain that the restriction of their visits from family members to one per month and the requirement that they wear a prison uniform for this purpose constitutes an interference with their right to respect for their family life.The Commission notes that these restrictions on family visits are the direct consequence of the award of loss of privileges imposed on the applicants for their refusal to wear prison uniform. The Commission considers that whilst the restrictions appear to involve prima facie an interference with the applicants' right to respect for their family life, it is clear that they have been imposed as part of a regime of disciplinary punishments whose purpose is to bring ***207** the protest to an end. The measures taken were in accordance with rule 31 of the Prison Rules (Northern Ireland) 1954 with due regard to rule 102 (1) which provides that special attention is to be paid to the maintenance of relationships between a prisoner and his family. The Commission thus finds that they were justified under Article 8 (2) as 'necessary in a democratic society … for the prevention of disorder …'.

85.The applicant Hunter makes a separate complaint that he was refused family mementoes and photographs forwarded to him for placing in his cell. However, it has not been made clear to the Commission whether this complaint concerns an interference with the applicant's incoming mail or a refusal by the prison authorities to allow him to keep and display such items in his cell. In these circumstances the Commission finds that it has not been provided with sufficient elements by the applicants to enable it to assess the complaint properly and that it must therefore be dismissed for lack of substantiation.

86.It follows therefore that the applicants' complaints concerning an interference with their private and family lives must be rejected as manifestly ill-founded in accordance with Article 27 (2) of the Convention.

Correspondence

87.The applicants complain of the following restrictions on the right to respect for their correspondence:

- (a) limitations on the number of letters which they may send and receive (one letter in and one letter out per month);
- (b) the reading by the prison authorities of letters, and the stopping of certain of them;
- (c) allegations concerning the supply of writing materials (*i.e.*, that they are not supplied with writing paper and a pen but must make an application to the prison officers on each occasion).

The applicant Campbell complains separately that notes intended for his solicitor concerning the present application were taken from him by order of the prison Governor.

88.The Commission observes that the question of the compatibility of restrictions imposed on prisoners' correspondence under the Prison Rules for England and Wales with this provision of the Convention, is currently under examination by the Commission in the Prisoners' Correspondence cases.43

89.The Commission notes that the present complaint raises related questions in connection with the Prison Rules (Northern Ireland) 1954. It therefore decides to *adjourn* its examination of***208** this complaint with a view to further deliberation in the light of its opinion in the above-mentioned applications.

On the alleged violation of Article 6

90.The applicants submit that they are victims of a violation of Article 6 in that their adjudications for disciplinary offences by the prison Governor did not involve an independent and impartial tribunal or respect other procedural rights contained in that provision. They state that the penalties they were

subjected to involving the constant imposition of periods of solitary confinement and substantial loss of remission constitute a deprivation of liberty. In addition, it is submitted that restrictions on the rights to family life, respect for correspondence, association and freedom of expression amount to a determination of their civil rights and obligations within the meaning of Article 6. The respondent Government submits that Article 6 is not applicable in the case of disciplinary adjudications by a prison governor. It is contended that the disciplinary offences involved, namely, the refusal to wear prison clothing or to work, are purely disciplinary matters unrelated to the ordinary criminal law. Moreover, loss of remission cannot be considered a deprivation of liberty since remission is considered a privilege. Similarly, the other penalties awarded cannot involve a deprivation of liberty since the applicants are already in prison.

91.Article 6 (1) provides that: In the determination … of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law …The remaining paragraphs of Article 6 guarantee the presumption of innocence and certain minimum rights for those charged with a criminal offence.

92.The Commission has first to examine whether the provisions of Article 6 apply to the regular disciplinary adjudications by the governor or his deputy for the offences of refusing to wear prison uniform and to work. It will then consider the applicability of Article 6 to the other adjudications for miscellaneous disciplinary matters.

93.It recalls that in the case of Engel and Others the European Court of Human Rights held that it was open to States to maintain a distinction between disciplinary and criminal law but that it has a jurisdiction to examine whether a charge of a disciplinary character counts as a 'criminal charge' for the purposes of Article 6 or to 'satisfy itself that the disciplinary does not improperly encroach upon the criminal'.In the exercise of this jurisdiction the Court enumerated the following three criteria to be taken into consideration in determining***209** whether the guarantees contained in Article 6 ought to have applied:44

- (1) 'whether the provisions defining the offence charged belong, according to the legal system of the respondent State, to criminal law, disciplinary law or both concurrently';
- (2) 'the very nature of the offence';
- (3) 'the degree of severity of the penalty that the person concerned risks incurring'.

94.With respect to the second criterion the Court added that this was a factor of 'greater import' and that45 when a serviceman finds himself accused of an act or omission allegedly contravening a legal rule governing the operation of the armed forces, the State may in principle employ against him disciplinary law rather than criminal law.The Commission notes that although the Court was careful to limit its analysis to the sphere of military service the Commission has previously considered the above criteria applicable to cases concerning prison disciplinary offences.46

95.In the present case, with respect to the adjudications which took place at first every 14 and then 28 days, the Commission notes that the offences with which the applicants were charged (*i.e.*, refusing to wear prison uniform or to work) were contrary to the rules concerning the operation of prison life, namely rules 44 and 63 of the Prison Rules (Northern Ireland) 1954, and thus clearly both governed by disciplinary law and disciplinary in nature.

96.The disciplinary nature of the adjudications is further confirmed by the actual penalties awarded, namely 14 days' loss of remission, 14 days' loss of privileges, 14 days' loss of earnings and three days'

cellular confinement. After 19 October 1978 when the adjudications were at 28-day intervals the awards of loss of remission and privileges have been of 28 days' duration and cellular confinement was discontinued. Moreover, rule 31 of the Prison Rules imposes clear limits on the awards the Governor may make for offences against discipline. For example under rule 31 (*b*) and (*c*) forfeiture of remission of sentence and of privileges may not exceed 28 days.

97.The Commission is aware that the cumulative effect of the penalties awarded continuously at regular intervals amounts to a severe punishment. However, it considers that for purposes of an examination under Article 6 the process of adjudication has to be viewed as a continuous series of adjudications at regular intervals for continuing disciplinary offences. It follows therefore that the resultant harshness of the accumulated awards made against the***210** applicants does not, in the Commission's opinion, detract from the disciplinary character of the offences.The Commission thus considers that the above disciplinary proceedings are not required to respect the guarantees contained in Article 6.

98.In so far as this complaint relates to other adjudications that the applicants were subject to, the Commission considers, taking the criteria elaborated above into consideration, that most of the charges were of a typical prison disciplinary nature (*e.g.*, failure to return prison property, disrespect to a prison officer, possession of prohibited articles) and resulted in awards which were not especially severe. It is of the opinion that for such offences summary discipline proceedings are not subject to the procedural safeguards contained in Article 6.

99.The Commission, however, observes that both the applicants McFeeley and Nugent were at different times charged with assault either of a prison officer or of other prisoners.47 With respect to these charges the Commission notes, first of all, that these offences belong both to disciplinary and criminal law. However, it is clear, in the context of a prison system, that assaults on prison officers or other prisoners are offences of a disciplinary nature which concern the security and good order of the prison.

100.As far as the severity of the punishments is concerned the Commission observes that the applicant Nugent received an award of three days' No. 1 Diet, three days' cellular confinement and 28 days' loss of privileges, in respect of one charge of assaulting a prison officer (29 April 1978) and a caution in respect of a similar charge (25 September 1978). The Commission does not consider that these punishments alter its characterisation of the offence as being essentially disciplinary for which summary discipline proceedings were appropriate. Moreover, it has not been informed of any elements of a more serious nature concerning these charges that would have required proper criminal proceedings.

101.The applicant McFeeley, on the other hand, was awarded on 15 September 1978 in respect of two charges of assault 15 days' and 10 days' cellular confinement (to run concurrently) and four months' and three months' loss of remission. He also awarded on 5 October 1978 14 days' cellular confinement on a similar charge. The above awards were made by the board of visitors. The Commission in the context of the serious disciplinary problems which existed at The Maze Prison arising out of the protest, does not consider that these penalties, imposed for essentially disciplinary offences, point to the determination of a 'criminal charge' for***211** which the safeguards contained in Article 6 ought to have been observed.

102.The applicants have also contended that the various adjudications against them concerned the 'determination' of 'civil rights'. In this respect they have referred to their rights of family life, correspondence, association and freedom of expression.

103.The Commission observes that the awards of punishments against the applicants were occasioned by the above-mentioned offences against prison discipline and made after disciplinary adjudications

against the applicants. These proceedings accordingly did not involve the determination of 'civil rights' as that concept is understood in Article 6.

104.The Commission concludes that the various disciplinary adjudications do not have to provide the guarantees contained in Article 6 and that this complaint must therefore be rejected as manifestly ill-founded under Article 27 (2) of the Convention.

On the alleged violation of Article 10

105.The applicants complain under this provision that their right to receive information and ideas is being infringed. They allege that they are only allowed to receive and send one letter every month, that they are provided with no reading material and that they have no access to television, radio or newspapers. In addition, they complain of the withdrawal of religious literature.The respondent Government maintains, inter alia, that the reception of information is subject to the limitations necessarily inherent in the fact of imprisonment. Moreover, it is stated that prisoners may use the library and that religious magazines had to be restricted because they were misused. Finally, the Government submits that the applicants are not cut off from the outside world since they are entitled to a monthly visit and a monthly letter.

106.Article 10 states as follows:

1.Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2.The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

107.The applicants have raised their complaint concerning an interference with respect for their correspondence under this provision,***212** as well as under Article 8. However, the Commission considers that Article 8 must be regarded as the lex specialis and thus does not propose to examine it under the present provision.

108.With regard to the remaining complaint that the applicants have been cut off completely from the media, the Commission would first observe that, even though they are subject to a loss of privileges, it is still open to them to make use of the library facilities, either naked or dressed in prison uniform or underwear. As the Commission has previously remarked, the fact that they choose not to wear either the prison uniform or underwear to avail themselves of the library must be regarded as their own responsibility. Moreover, the Commission notes that religious magazines have been removed because of their misuse by certain unidentified prisoners.

109.However, it remains true that the applicants, by virtue of a loss of privilege imposed by way of rule 31 and (as regards the privileges of a radio, books, periodicals, newspapers and educational facilities) rule 201, have been subject to restrictions in their access to the media and thus their freedom to receive 'information' and 'ideas'. In this sense the Commission considers there has been an interference with their freedom of expression.

110.The Commission has had regard to the fact that the above losses of privileges were imposed by the Governor at regular intervals of 14, and subsequently 28 days, for the disciplinary offences of refusal to wear a uniform and to work. It is beyond doubt that the above interference was 'prescribed by

law', that is, rules 31 and 201 of the Prison Rules (Northern Ireland) 1954. Moreover, the Commission considers that the loss of privileges may be regarded as 'penalties' imposed by the prison authorities in order to end a protest campaign which was substantially undermining prison order and security. Accordingly, taking into account the extent of the interference, the context in which the 'penalties' were awarded and the fact that they were awarded for limited periods, the Commission finds that the above interference is justified as being 'necessary in a democratic society … for the prevention of disorder …' within the meaning of Article 10 (2).

111.The Commission therefore considers that this complaint must also be rejected as manifestly ill-founded under Article 27 (2) of the Convention.

On the alleged violation of Article 11

112.The applicants contend that the complete denial of all opportunity to associate with others, the denial of exercise and the imposition of solitary confinement constitute an unjustifiable infringement of their freedom of association with others.The Government submit that the right of association relates to the right to form combinations or societies and not a right to enjoy the company of others. In the alternative, it is submitted***213** that the applicants do have opportunities to meet and associate with other prisoners.

113.*Article 11 (1)* reads as follows: Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

114.As the language of Article 11 suggests, the concept of freedom of association, of which the right to form and join trade unions is a special aspect, is concerned with the right to form or be affiliated with a group or organisation pursuing particular aims. It does not concern the right of prisoners to share the company of other prisoners or to 'associate' with other prisoners in this sense.

115.Consequently the Commission considers that this complaint must be rejected under Article 27 (2) as incompatible *ratione materiae* with the provisions of the Convention.

On the alleged violation of Article 13

116.The applicants complain under this provision that no effective procedures existed in Northern Ireland to consider their complaints. They make the following claims concerning the availability of an effective remedy in this regard.(1)They submit the opinion of a Queen's Counsel at the Northern Ireland Bar that their circumstances and conditions will not ground a legal remedy.(2)The courts are not likely to grant the remedy of certiorari in respect of disciplinary adjudications by a prison Governor.48 (3)The board of visitors or the Northern Ireland Office cannot be regarded as effective remedies. Moreover they complain that members of the board were not prepared to write down their complaints.(4)A Government Minister could institute an independent enquiry into prison conditions under section 7 of the Prison Act (Northern Ireland) 1953. The applicants sought this remedy through their Member of Parliament but an enquiry was refused.(5)Under section 19 of the Prison Act (Northern Ireland) 1953 a justice of the peace has a statutory right to inspect prisons and receive complaints from prisoners. The applicants claim their letters to the justices were suppressed.

117.Article 13 states as follows: Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.***214**

118.The Commission considers that this issue gives rise to difficult questions of law and fact which require further examination in the light of the parties' observations. It therefore decides to *adjourn* consideration of this complaint pending further deliberations.

On the alleged violation of Article 14

119.The applicants further complain that they are victims of discrimination in respect of their rights under Articles 3, 8, 9, 10 and 11 of the Convention. In particular they allege discriminatory treatment in the following respects:

- (i) discrimination on grounds of conscience and belief in that those convicted after 1 March 1976 are being treated differently from those (a) convicted before that date and (b) convicted after that date for offences committed before it;
- (ii) discrimination on grounds of sex in that protesting women prisoners at Armagh Prison are subject to a lighter disciplinary regime, for the same offences, which allows them to wear their own clothes and deprives them of fewer privileges.

The Government reply, firstly, that the treatment of prisoners in The Maze has a reasonable and objective justification because of their conduct and that, irrespective of the beliefs or political opinions of those responsible, all such behaviour would have been met in the same way. Secondly, it is submitted, with reference to the claim of sex discrimination that Article 14 does not impose an obligation for all prisons to be run on the same lines.

120.Article 14 reads as follows: The enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

121.The Commission recalls briefly the general principles governing the interpretation of Article 14 as stated by the European Court of Human Rights in the Belgian Linguistic Case (No. 2).49 Article 14 must be considered in conjunction with one of the rights and freedoms contained in the Convention. However, it is clear that not every difference in treatment in respect of one of the rights and freedoms is forbidden by Article 14. The Commission, in determining whether a difference in treatment contravenes Article 14 must first consider whether the distinction has an objective and reasonable justification taking into consideration the aim and effect of the measure in question, having regard to the***215** principles which normally prevail in democratic societies, and second, whether there is a reasonable relationship of proportionality between the means employed and the aims sought to be realised.50

122.The applicants in essence complain that the authorities arbitrarily decided to allow those convicted of offences committed before this date to continue to benefit from special category status and enjoy the various privileges that such status entails. The Commission does not, however, consider that such a difference in treatment can be seen as arbitrary. It recalls that the reasons for the ending of special category status were concerned with restoring disciplinary control by the prison authorities and facilitating rehabilitation work. Loss of control was due to the inadequacy of cell accommodation and the housing of male prisoners in compounds. As the Gardiner Report stated:51

… there are no facilities for organised employment. Each compound is virtually a self-contained community which keeps the premises it occupies to such a standard as it finds acceptable and engages, if it so wishes, in military drill or lectures on military subjects …

… the housing of male special category prisoners in compounds means that they are not closely controlled as they would be in a normal cells, discipline within compounds is in practice exercised by compound leaders, and they are more likely to emerge with an increased commitment to terrorism

than as reformed citizens.

123.It was further recognised by the Gardiner Committee that it would not be possible to begin to phase out special category status until new cellular prison accommodation was available.52 It is clear from the documents submitted by the parties, in particular a statement by the then Secretary of State for Northern Ireland (Mr. Rees) to the House of Commons concerning the phasing out of special category status, that due to the shortage of appropriate cellular accommodation the abolition of special category status could not apply to all prisoners. Accordingly, it was decided that those sentenced for offences committed after 1 March 1976 would be accommodated in cellular accommodation and would not be able to claim special category status. 53

124.The Commission therefore considers that the above difference in treatment, in so far as it raises an issue under Article 14 in conjunction with Article 8, finds a reasonable and objective justification in the shortage of suitable cell accommodation. It also considers that there is a reasonable relationship of proportionality between the means employed and the goal of phasing out special category status.

125.In so far as the applicants complain of Article 14 in conjunction with Article 9, the Commission observes that it has***216** already come to the decision that the right to special category status is not amongst the rights guaranteed by the Convention. Consequently the applicants' complaint of discriminatory treatment in this regard is made in conjunction with a right not contained in the Convention, as required by Article 14. This complaint must be rejected, therefore, under Article 27 (2) as incompatible *ratione materiae* with the provisions of the Convention.

126.The applicants further complain that they are the victims of discriminatory treatment on grounds of sex, in that female protesting prisoners in Armagh Prison are subject to a disciplinary regime which is in many respects less severe. For example, they point to the fact that they are not awarded periods of 'cellular confinement' and that they are entitled to many 'privileges' that have been withdrawn from the applicants because of their behaviour, such as the 'privilege' of wearing their own clothes.

127.The Commission observes, first of all, that in so far as this complaint concerns Article 14 in conjunction with Article 11 based on the fact that women protesting prisoners have greater opportunities for association, it must be rejected as incompatible ratione materiae for the reasons developed above.

128.In so far as this complaint is raised under Article 14 in conjunction with Articles 3 and 8, the Commission notes that the disciplinary regime applicable to female prisoners in Armagh is less severe, particularly as regards the type of privileges withdrawn. However, the Commission does not consider that such difference in treatment constitutes discrimination under Article 14. It considers that national prison authorities enjoy a certain latitude which permits them to take account of the particular context of a prison dispute in formulating their disciplinary response. In the present case, with respect to that area of differential treatment that the applicants can complain of under the Convention, the different disciplinary measures find a reasonable and objective justification in the contrast between the security situations obtaining in The Maze and Armagh Prisons. In this respect the Commission has attached weight to the following factors:

- —the scale of the damage to prison order and security posed by the protest in The Maze (which has a prison population of 1,100 (approximately) of whom 350 have been engaged in the protest) compared with the situation in Armagh Prison where the protest has involved only 32 women prisoners;
- —the violent and disruptive behaviour of protesting prisoners in The Maze which finds no counterpart in

Armagh Prison.

129.Moreover, given these considerations, the Commission does not find the difference in treatment between the two prisons disproportionate to the goals of the prison authorities in restoring order and discipline within the respective prison communities.***217**

130.It follows, therefore that the Commission must reject this complaint as partly incompatible ratione materiae and partly manifestly ill-founded under Article 27 (2) of the Convention.

On the alleged violation of Article 18

131.The applicant McFeeley complains separately of a breach of Article 18. He alleges that his removal from association under rule 24 of the Prison Rules (Northern Ireland) 1954 was for reasons other than his refusal to wear a prison uniform. He maintains that the authorities attempted to break his will and to use him as an experiment with a view to testing the breaking-point of other prisoners.

132.The Government states that he was removed from association on various occasions, not to break his will, but because he persisted in giving orders to fellow prisoners.Article 18 provides as follows: The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

133.The Commission notes that the applicant was removed from association by the Governor under rule 24 on various occasions during his imprisonment as noted above. However, the Commission does not find it established that the authorities tried to break his will and used him for experimental purposes. It accepts that he was removed from association because of his disruptive behaviour and attempts to command other prisoners, and further, that removal to the punishment cell was necessitated by the lack of available accommodation to separate a prisoner from the rest of the prison community.

134.It follows, therefore, that this complaint must also be rejected as manifestly ill-founded under Article 27 (2) of the Convention.

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1. These numbers refer to the paragraph numbers under the heading 'The Law', p. 184, *infra.*

2. For a summary of the parties' submissions, see pp. 27–68 of the Commission's decision. The Commission adjourned for further consideration questions relating to prisoners' correspondence and to Article 13.

3. The applicant Nugent was released from prison on 11 May 1979.

4. *Report of a committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland* (Cmnd. 5847).

5. At the end of February 1976, there were more than 1,500 special category prisoners. By 10 December 1978 the number had fallen to 617, essentially as a result of the release of prisoners whose sentences had been completed.

6. S.I. 1976 No. 226 (N.I. 4).

7. 1954 No. 7.

8. Appendix 3 to the psychiatrist's report.

9. Engel v. the Netherlands (1976), 1 E.H.R.R. 647.

10. See r. 17 (2).

11. Series B, No. 1, p. 50.

12. R. v. Board of Visitors of Hull Prison, Ex parte St. Germain[1979] Q.B. 425, [1979] 2 W.L.R. 42, [1979] 1 All E.R. 701 ; hereinafter referred to as the 'St. Germain case.'

13. See note 11, *supra.*

14. See, *e.g.*,Donnelley v. United Kingdom,4 D. & R. 4, 64.

15. De Wilde, Ooms and Versyp v. Belgium (No. 1) (Vagrancy Cases) (1971); 1 E.H.R.R. 373, 400, para. 60.

16. *Ibid.*, p. 401, para. 62.

17. See note 11, *supra.*

18. *i.e.* Megaw and Waller L.JJ.

19. See, generally, the heading 'The Facts,' *supra.*

20. See note 11, *supra.*

21. X v. U.K.(1977) 10 D. & R. 5.

22. *Ibid.*, p. 20.

23. See para. 13.

24. De Becker v. Belgium(1958) 2 Yearbook 214, 244 ; First Greek Case (second decision on admissibility) (1968) 11 Yearbook 730, 778.

25. Tyrer v. United Kingdom (1978), 2 E.H.R.R. 1.

26. 12 Yearbook 186.

27. 19 Yearbook 749, 753.

28. (1978), 2 E.H.R.R. 25, 79, para. 162.

29. (1978), 2 E.H.R.R. 1.

30. *Ibid.* at p. 10, para. 30.

31. *Ibid.* at p. 10, para. 30.

32. *Ibid.*, at p. 9, para. 29.

33. See note 3, *supra.*

34. See Ensslin, Baader and Raspe v. Federal Republic of Germany(1978) 14 D. & R. 64 , 111.

35. Prior to 19 October 1978 the same punishments were awarded every 14 days for a duration of 14 days.

36. See Ensslin's Case, note 32 *supra*, p. 109.

37. See paras. 45 to 50.

38. *i.e.*, cellular confinement for offences other than refusal to wear prison uniform, which is served in the punishment block.

39. See para. 49.

40. See para. 59.

41. (1976) 19 C.D. 342.

42. *i.e.*, the Prison Rules (Northern Ireland) 1954, r. 31.

43. See *e.g.*,Colne v. U.K., McMahon v. U.K. and Carne v. U.K.(1977) 10 D. & R. 154 , 163 and 205.

44. Engel v. the Netherlands (1976), 1 E.H.R.R. 647.

45. *Ibid.*, para. 82.

46. See, *e.g.*,Kiss v. United Kingdom(1976) 7 D. & R. 55.

47. The applicant McFeeley was charged with assaulting a prison officer and another prisoner on 15 September 1978. He was further charged with assault on other prisoners on 5 October 1978. The applicant Nugent was charged with assault on a prison officer on 29 April 1978 and 25 September 1978.

48. St. Germain case, note 11, *supra.*

49. (1968), 1 E.H.R.R. 252.

50. (1968), 1 E.H.R.R. 252.

51. See note 3 *supra*, paras. 104, 106.

52. *Ibid.*, para. 108.

53. See 899 H.C.Debs., col. 233 (4 November 1975).

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