Neutral Citation no. (2000) 2115

Ref: KERE3251

Judgment: approved by the Court for handing down

Delivered: 01/09/00

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY MARK FULTON FOR JUDICIAL REVIEW

KERR J

Introduction

Mark Fulton is a sentenced prisoner, currently serving a period of imprisonment in HM Prison, Maghaberry. He was sentenced on 30 April 1999. Before that, he had been in custody on remand. All of his time in custody, whether as a remand or as a sentenced prisoner, has been served in the Punishment and Segregation Unit of Maghaberry. According to the prison authorities, he is detained there for his own protection.

On 14 May 1999 Mr Fulton's solicitors wrote to the Secretary of State for Northern Ireland asking that he be transferred to HM Prison, Maze. On 27 May 1999 the applicant petitioned the Secretary of State also seeking the transfer. Both requests were refused on 17 August 1999. By this application, Mr Fulton challenges the decision to refuse to transfer him to HM Prison, Maze.

Background

The applicant was sentenced to four and a half years imprisonment for firearms offences on 30 April 1999. He has claimed that in PSU, Maghaberry, where he has been detained, he is locked in his cell for twenty three hours a day. He is permitted one hour of exercise. All meals must be consumed in his cell. He is permitted to shower once per day but the shower room is kept locked. He is allowed to use the telephone three times a day and he receives one visit per week. His cell measures eight feet by twelve feet. His only contact is with the other inmate of PSU, one Alexander Smyth.

The applicant claims that his health has been affected by his continued detention in PSU. A report on his condition prepared by Dr B Mangan, consultant psychiatrist, in October 1999 contains the following opinion :-

> "Over the last ten months he has developed a moderately severe anxiety disorder characterised by continuous feelings of nervousness, muscular tension and concerns about his personal safety, heightened startle reflex, sleep disturbance and episodes of palpitations which occur once weekly. He experiences symptoms of panic when he feels he is going to have a heart attack. In addition to his anxiety symptoms he has some intermittent depressive symptomatology including thoughts of life not being worth living. The depressive symptoms were worse in the weeks following his father's death in April 1999.
>
> Generalised anxiety disorders are often related to chronic environmental stress and I believe this is the case with Mr Fulton. He states that he was an associate of Billy Wright who was murdered in prison in December 1997 and he worries that he too will be the victim of an assassination attempt while in prison. People with anxiety disorders usually rely on the support of family or friends to help cope with their debilitating symptoms. Mr Fulton had had no opportunity to associate with prisoners with whom he would feel safe and this is exacerbating his condition. Again he found the period following his father's death particularly difficult for this reason. I would expect there to be an improvement in Mr Fulton's condition if he was re-located in a

> prison block with other prisoners with whom he would be able to fully associate."

According to the applicant, he was told by a governor in HMP Maghaberry, Governor Edgar, that he could not be allowed to associate with other prisoners because he had a high public profile and because he had been a friend of Billy Wright. (Mr Wright was a prominent member of the terrorist organisation, the Loyalist Volunteer Force, and was murdered in HMP Maze by Republican terrorists).

The applicant claims that, in refusing his request to be transferred to HMP Maze, the Secretary of State failed to take into account the effect that his continued detention in the conditions he has described would have on his health. He also claims that the Secretary of State failed to have regard to the fact that his transfer to HMP Maze would assist with the continuing decommissioning of weapons held by the Loyalist Volunteer Force. She also, he claims, failed to take into account the fact that he would be willing to return to Maghaberry when Maze closes. He further contends that his continued detention is in breach of the European Convention on Human Rights and the United Nations International Covenant on Civil and Political Rights 1966.

Martin Mogg, the governing governor of HM Prison, Maghaberry, in affidavits filed on behalf of the respondent, explained that the decision not to transfer the applicant to Maze had its origins in the Good Friday agreement. That agreement, and in particular, the section dealing with prisoners, prompted a reconsideration of the policy and practice of the Secretary of State concerning the accommodation of prisoners at HMP Maze. A new policy came into effect in July 1998. The import of the revised policy was that, as a general rule, prisoners remanded in custody in respect of or convicted of offences committed after 10 April 1998 would be allocated to HMP Maghaberry and would be accommodated there throughout their entire period of

imprisonment. This was not, according to Mr Mogg, an inflexible policy and the Secretary of State has been prepared to consider the particular circumstances of individual cases.

Mr Mogg also stated that it has been the consistent assessment of the Prison Security Department that the applicant would be at grave risk if accommodated in normal prison conditions. As a result, it has been considered necessary to apply the segregation provisions of Rule 32 of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995 to him. This had been the subject of regular reviews and the board of visitors had provided all requisite authorisations to continue the segregation of the applicant from other prisoners.

Mr Mogg described the applicant's normal routine under the PSU regime as follows :-

> "(a) Unlock around 08.30 hours and breakfast collected and eaten in cell (locked). He is also asked if he has any requests for the day *e.g.* special use of telephone, special visit, educational request.
>
> (b) Unlocked for telephone use three times a day at 09.30, 15.30 and 19.00 hours. The applicant makes frequent use of the telephone and is granted enhanced use on occasions.
>
> (c) Unlock for gym between 10.00 and 11.00 hours every second day -escorted to gym for personal use.
>
> (d) Collects lunch around 11.45 hours to eat in cell.
>
> (e) Unlock for exercise yard around 14.00 hours. The one hour exercise period is rotated between the prisoners, sometimes mornings, sometimes afternoons. The applicant enjoys association with another prisoner who poses no threat.
>
> (f) At 15.45 hours he collects and eats his evening meal in cell (locked).
>
> (g) Supper is available at 19.00 - 19.30 hours. The applicant again uses telephone and is unlocked for this.
>
> (h) The applicant receives visits, normally once a week on a Saturday afternoon. On occasions he receives visits on a Tuesday

> also. He enjoys considerable latitude regarding the duration of his visits. He is unlocked when visits take place.
>
> (i) The applicant enjoys a television in his cell throughout the day.
>
> (j) The applicant's main pastime appears to be playing the guitar, which is available to him in his cell."

Relying on this account of the applicant's normal regime, Mr Mogg disputed the applicant's claim that he was locked up for twenty three hours per day. He had visits on a regular basis, he had access to the telephone three times a day and use of the gymnasium on average three times per week. Mr Mogg stated that the applicant's cell was the same size as other cells in the prison. Educational facilities were available but the applicant chose not to avail of these. He was able to communicate with prisoners in adjoining cells.

Mr Mogg explained that PSU consisted of two divisions. The ground floor was occupied by those subject to punishment and the first floor was for those prisoners - like the applicant - who are segregated from the general prison population in their own interests. From the time that the applicant entered prison, both prison management and the board of visitors have taken the view that the applicant has been under serious threat to his personal security. They have concluded that it is imperative that his association must be curtailed because of that threat.

Mr Mogg also dealt with the applicant's claim that the Secretary of State had failed to take account of his participation in the decommissioning process. He said :-

> "…[the Secretary of State] … considered the various representations made by and on behalf of the applicant. She had particular regard to the applicant's active participation in the decommissioning process as the appointed representative of the Loyalist Volunteer Force. She recognised that the applicant had

> expended great effort and commitment throughout 1998 to achieve decommissioning by the LVF …".

He explained that the Secretary of State, having balanced the various factors, concluded that the considerations which underpinned the policy referred to above outweighed the personal factors pertaining to the applicant's request to be transferred. In this context, Mr Mogg pointed out that such claims as the applicant made in his affidavits about his health had not been raised previously. In any event, he was not receiving medication but the medical authorities in the prison were willing to liaise with Dr Mangan and the applicant's general practitioner in order to ensure that he received such medical treatment as he may require.

The judicial review application

Three principal arguments were advanced on behalf of the applicant on the hearing of the judicial review application. It was argued that the decision of the Secretary of State not to transfer the applicant failed to take account of the viable alternative of accommodating the applicant at HMP Maze. It was also submitted that she failed to recognise and have regard to the fact that his continued detention was in breach of the European Convention on Human Rights and Fundamental Freedoms. Finally, it was claimed that the decision was out of keeping with the general principles underlying the Prison and Young Offenders Centre Rules (Northern Ireland) 1995.

For the respondent it was submitted that the Secretary of State had taken into account the possibility of transferring the applicant to HMP Maze. She had recognised that the policy of sending those convicted of offences committed after April 1998 to HMP Maghaberry could not be applied inflexibly and that each case had to be considered individually. The consideration given to the applicant's particular circumstances obviously involved an assessment of whether he

should be transferred to the Maze. The alternative represented by that particular option had been taken into account, therefore.

In relation to the applicant's second argument the respondent submitted that there was no breach of the European Convention on Human Rights. In any event, such a breach could not afford the applicant a remedy in domestic law in advance of the coming into force of the Human Rights Act 1998. Finally, the respondent argued that the applicant had failed to identify the principles underlying the 1995 Rules which the respondent was said to have ignored.

The statutory framework

Section 15(1) of the Prison Act (Northern Ireland) Act 1953 provides :-

> "A prisoner sentenced by any court or committed to a prison on remand or pending trial or otherwise may, notwithstanding anything to the contrary in any other enactment, be lawfully confined in any prison provided or maintained by the Secretary of State".

Section 15(2) gives the Secretary of State power to transfer prisoners from one prison to another. It provides :-

> "Prisoners shall be committed to such prison as the Secretary of State may from time to time direct; and may during the term of their imprisonment be removed, by direction of the Secretary of State, from the prison in which they are confined to any other prison".

It is to be observed that the Secretary of State enjoys an unfettered discretion as to the movement of prisoners from one prison to another. Counsel for the applicant accepted, however, that the Secretary of State could devise a policy to guide her in the exercise of this discretion. He did not seek to argue that the application of the July 1998 policy to the applicant's case had fettered the Secretary of State's discretion. Rather, he submitted, she had failed to take account of factors which, he suggested, ought to have caused her to disapply the policy.

Rule 32 of the Prison and Young Offenders Centre Rules (Northern Ireland) 1995 provides :-

> "(1) Where it is necessary for the maintenance of good order or discipline, or in his own interests that the association permitted to a prisoner should be restricted, either generally or for particular purposes, the governor may arrange for the restriction of his association.
>
> (2) A prisoner's association under this rule may not be restricted under this rule for a period of more than 48 hours without the agreement of a member of the board of visitors or of the Secretary of State.
>
> (3) An extension of the period of restriction under paragraph (2) shall be for a period not exceeding one month, but may be renewed for further periods each not exceeding one month.
>
> (4) The governor may arrange at his discretion for such a prisoner as aforesaid to resume full or increased association with other prisoners and shall do so if in any case the medical officer so advises on medical grounds.
>
> (5) Rule 55(1) [which deals with the amount of exercise to be allowed for prisoners] shall not apply to a prisoner who is subject to restriction of association under this rule but such a prisoner shall be entitled to one hour of exercise each day which shall be taken in the open air, weather permitting."

I have previously held that a judicial review challenge to an *intra vires* exercise of the power under Rule 32(1) can proceed only on the grounds of *Wednesbury* unreasonableness - *Re Taggart's Application* [1998] unreported. I remain of the view that this is the only basis on which a challenge to the decision of the Secretary of State may be made.

Failure to take account of "the viable alternative"

The applicant's argument that the Secretary of State had not taken into account the possibility of transferring him to HMP Maze resolved to the claim that she had not given sufficient weight to his application to be moved there. It was beyond question that the

respondent had considered this option. The applicant's solicitor had written to the Secretary of State requesting that the applicant be transferred to the Maze on 14 May 1999. The applicant himself had lodged a petition to like effect on 27 May 1999. To hold that the Secretary of State had not taken this alternative into account would require me to conclude that she had wilfully ignored both applications.

In a letter to the applicant's solicitors dated 16 August 1999, the Director of Policy and Planning of the Prison Service acknowledged that there was nothing in the 1953 Act which precluded the transfer of the applicant to HMP Maze. She stated that the Secretary of State had taken all of the circumstances of the applicant's case into account. Against this background, it is inconceivable that the Secretary of State did not have regard to the possibility of transferring the applicant to the Maze.

As I have said, however, the applicant's argument was, in fact, that the Secretary of State did not take sufficient account of the possibility of transferring the applicant to HMP Maze. I do not consider that an argument based on the failure of the Secretary of State to give adequate weight to this factor can succeed. It appears to me that this could only be accepted if it could be demonstrated that the Secretary of State had acted irrationally in refusing the request to transfer. That is patently not the case. I am satisfied, therefore, that the applicant's argument on this point must fail.

The European Convention on Human Rights

The applicant argued that the conditions in which he was held in Maghaberry were in breach of Articles 3, 7 and 8 of the European Convention on Human Rights and Fundamental Freedoms.

Article 3 provides :-

> "No-one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Counsel for the applicant submitted that the applicant's conditions of detention amounted to degrading treatment. He relied on the decisions of the European Court of Human Rights in *Ireland -v- United Kingdom* [1978] 2 EHRR 25 and *Lopez Ostra -v- Spain* [1994] 20 EHRR 277.

Article 7(1) provides :-

> "No-one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. *Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed.*"

It was contended for the applicant that the applicant was required to suffer a heavier penalty than that imposed by the court in that he was held in what amounted to solitary confinement.

Article 8 provides :-

> "1. Everyone has the right to respect for his private and family life, his home and correspondence.
>
> 2. There shall be no interference by a public authority with the 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."

The applicant argued that the rights enshrined in this Article included the right to establish and develop relationships with other human beings especially in the emotional field - *Neimitz -v- Germany* [1992] Series A No. 251-B 16 EHRR. It was submitted that the conditions in which he was held deprived him of that opportunity.

I do not accept that there has been a breach of any of the Articles of the European Convention relied on by the applicant. In *Harris, O'Boyle and Warbrick's* Law of the European Convention on Human Rights, the authors state (at page 66) that the conditions or treatment of persons in a place of detention may be such as to amount to inhuman treatment but "solitary confinement, or segregation, of persons in detention, is not in itself a breach of Article 3". They also point out that the Court of Human Rights has held in a series of decisions that it is permissible for reasons of security or discipline or to protect the segregated prisoner from other prisoners to hold an inmate in solitary confinement - *Ensslin, Baader and Raspe -v- FRG Nos. 7526/76, 7586/76 and 7587/76* 14 DR 64 [1978], *McFeely -v- UK No. 8317/78* 20 DR 44 [1980] and *Krocher and Moller -v- Switzerland No. 8463/78* 34 DR Com Rep; CM Res DH (83) 15.

In each 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" - *Ensslin* at 109. For that purpose, I have accepted the description given by Mr Mogg of the applicant's daily regime and the facilities available to him. On the hearing of the application, the accuracy of Mr Mogg's account was not challenged. Nor was it disputed by the applicant that a real threat to his life would arise if he were allowed to associate with other prisoners in HMP Maghaberry. His essential complaint is that he should be allowed to return to HMP Maze. But, as Mr Mogg explained in paragraph 7 of his first affidavit, if the applicant were to be allowed to return to that prison, this would have a deleterious effect on the new policy:-

> "7. The main considerations underlying the revised policy were the following:

> (i) The Secretary of State considered and continues to consider that public confidence would be undermined if prisoners who claim to belong to a 'ceasefire' faction but have been remanded or convicted in respect of offences outwith the ambit of the Northern Ireland (Sentences) Act 1988 were allocated to HMP Maze after the operative date of the new legislation. As a matter of Government policy it is considered highly undesirable that such prisoners should continue to enjoy the controversial and unique regime at HMP Maze.
>
> (ii) Further, since July 1998, Government has considered that the allocation to HMP Maze of prisoners affiliated to dissident paramilitary groups would be offensive to the majority of the community.
>
> (iii) HMP Maze suffers from certain recognised and long standing shortcomings as a modern prison establishment. Its closure has been the subject of consideration for some considerable time and the [Good Friday Agreement] provided an ideal opportunity to put into operation a phased closure programme."

I consider that these are matters which must be taken into account in deciding whether the applicant's conditions of detention can be said to amount to inhuman or degrading treatment. The circumstances in which the applicant is held, the effect that it has on him, the facilities that are made available to him and the purpose of his being deprived of association (*viz.* his own protection) must also be considered. While it is true that Dr Mangan is of the opinion that the applicant's anxiety disorder has been exacerbated by the conditions in which he is held, there are clearly a number of other factors which contribute to the applicant's current mental condition. Moreover, now that the applicant's medical condition is known to the prison authorities, appropriate medical treatment will be provided if he wishes to avail of it. Having regard to all material circumstances, I am entirely satisfied that the conditions in which the applicant is

imprisoned do not amount to inhuman or degrading treatment and that no breach of Article 3 arises.

The second principle contained in Article 7(1) relates to the imposition of a heavier *penalty* on the prisoner than was available at the time of the commission of the offence. Thus in *Welch -v- UK* [1995] 20 EHRR 247 where a new provision of the Drug Trafficking Offences Act 1986 came into force after the applicant's arrest but before his trial, the European Court of Human Rights held that a confiscation order was a penalty and that Article 7 had been breached. The conditions in which a prisoner is held must be distinguished from the penalty imposed by the court, however. The court has no role in deciding what those conditions should be. This is a matter for the prison authorities, the Board of Visitors and, in certain circumstances, the Secretary of State. I am satisfied that the nature of the conditions in which the applicant is held cannot be said to constitute a "penalty" under Article 7 and the applicant's claim under this Article must also fail, therefore.

In relation to the claim under Article 8 of the Convention, while it has been held that prisoners are entitled to associate with each other (*McFeely -v- UK* [1981] 3 EHRR 161), the jurisprudence of the European Commission and Court of Human Rights has consistently recognised that this right must be tempered by considerations such as administrative and security requirements, the prevention of disorder and crime and the protection of the rights and freedoms of others. In *Starmer* European Human Rights Law, the author deals with this topic at page 480 in the following passage:-

> "[It has been held that] … the state is justified in restricting family visits to once in every two months [*Appl 7455/76* unpublished]; one visit of one hour every month [*Boyle and Rice -v- UK* (1988) 10 EHRR 425]; refusing an application for temporary release to attend a family funeral on security grounds [*Appl 3603 /68*];

> subjecting a family to closed visits within the hearing of prison officers [*X -v- UK* 14 DR 246]; imposing a policy restricting applications for compassionate leave to cases where a family member is dangerously ill [*Boyle and Rice ibid. at paras 79-81*]; keeping prisoners under surveillance while they use the toilet and searching them before and after visits [*McFeely, ibid.* paras 80 and 81]".

These examples illustrate the nature of the right available to prisoners under Article 8. It is not absolute. Limitations imposed on it for a wide variety of administrative or security reasons have been recognised as legitimate. The limitations on the right to association in the present case are for the purpose of the applicant's safety. There is no dispute as to the need for this restriction on the applicant's association for so long as he remains in HMP Maghaberry. What the applicant says, in effect, is that his right to association is of such importance that he should be moved to Maze so that he can associate with other inmates. I am satisfied that, if he were moved, this would inevitably involve a substantial compromise on the efficacy of the revised policy in relation to the accommodation of prisoners sentenced for offences committed after April 1998. I am of the opinion that the considerations which underpin that policy clearly outweigh the personal interests of the applicant and that they are "necessary in a democratic society … for the protection of the rights and freedoms of others"(Article 8(2)). The interests of society in Northern Ireland as a whole in having a conventional prison regime for those sentenced after April 1998 are obvious and compelling. I consider that the rights and freedoms of law abiding members of society require the protection afforded by the revised policy introduced by the Secretary of State in July 1998. I have concluded, therefore, that the refusal to transfer the applicant to Maze does not involve any breach of Article 8.

The conclusion that there has not been a breach of any of the applicant's Convention rights renders it unnecessary to deal with the argument that he was entitled to rely on those rights in advance of the coming into force of the Human Rights Act 1998.

The general principles of the 1995 Rules

The applicant argued that the decision not to transfer him was in breach of "the general principles which underlie the Prison and Young Offenders Centre Rules (Northern Ireland) 1995". Counsel for the applicant relied in particular on rule 2(1), paragraphs (b), (c), (d), (e), (h), (j) and rule 2(2). In so far as is material, rule 2 provides:-

> " **2.** - (1) These rules are made with regard to the following general principles-
>
> > (a) All prisoners committed by the courts shall be held safely and securely for the protection of the community and in the interests of justice;
> >
> > (b) The treatment of prisoners will be such as to sustain their self-respect and health and to encourage them to develop a sense of personal responsibility;
> >
> > (c) Prisoners' living conditions shall be compatible with human dignity and acceptable standards in the community;
> >
> > (d) Prisoners will be offered opportunities to use their time constructively while in prison and will be encouraged to do so;
> >
> > (e) Each prisoner will be considered individually and where appropriate will be able to contribute to decisions regarding how he spends his time while in prison;
> >
> > ….
> >
> > (h) Order and discipline in prison shall be maintained at all times with firmness and fairness

> but with no more restriction than is necessary for safe custody and well-ordered community life;
>
> ….
>
> (j) Prisoners retain all rights and privileges except those removed as a necessary consequence of their imprisonment;
>
> ….
>
> (2) These principles, taken together, are intended as a guide to the interpretation and application of the rules."

It is to be noted that rule 2 (2) makes clear that the principles contained in the rule are to be used as a *guide* to the interpretation and application of the rules. The rule itself does not create any freestanding rights. Its purpose is to aid construction of the other rules and to assist in determining whether it is appropriate to invoke the provisions of those rules. It follows that, where the conditions for the valid exercise of the power under rule 32 exist, resort to that power cannot be inhibited by rule 2. Rule 32 must be applied with the principles adumbrated in rule 2 in mind but, provided that is done, there can be no valid challenge to the exercise of the power to restrict a prisoner's association. There is no evidence that in this case the power under rule 32 was exercised without reference to rule 2. There is nothing in the circumstances of the case to suggest that any of the general principles set out in the rule have been ignored or overlooked. On the contrary, I am satisfied that, given the circumstances which affected the applicant, Rule 32 was properly invoked.

Other factors

By way of subsidiary argument, counsel for the applicant submitted that the Secretary of State had failed to take into account certain other matters. Firstly, he suggested that she did not have regard to the applicant's medical condition. It is clear, however, that the applicant's mental

state was not brought to the attention of the prison authorities before the launch of the present proceedings. The Secretary of State's decision cannot be impeached because of her alleged failure to take account of a factor of which she could not have been aware. In any event, as soon as this matter became known, steps were taken to ensure that medical treatment for the applicant would be made available if it was considered that he required it and if he wished to avail of it. Even if I had concluded that the Secretary of State ought to have taken the matter of the applicant's mental health into account and had not done so, I would have been disposed to exercise my discretion to refuse relief on the basis that such steps as ought to have been taken to deal with that situation had now been addressed.

It was also suggested that the Secretary of State had failed to have regard to the applicant's participation in the decommissioning process in relation to weapons held by LVF. This suggestion is expressly denied in paragraph 11 of Mr Mogg's first affidavit (which is set out at page 6 above) in which he described how the Secretary of State had the matter of the applicant's contribution to the decommissioning very much in mind when she decided not to trander him. No challenge to Mr Mogg's claim in this respect has been raised by or on behalf of the applicant. I am satisfied that the applicant's contribution to the decommissioning issue was fully taken into account by the Secretary of State and that the applicant's argument on this point must also fail.

In the Order 53 statement it was claimed that the Secretary of State failed to have regard to the applicant's intention to return to HMP Maghaberry whenever HMP Maze closed. This argument was not pursued by counsel for the applicant on the hearing of the application and, in any event, no evidence to support the claim was produced.

Finally, the applicant claimed that the Secretary of State did not take into account the United Nations International Covenant on Civil and Political Rights. In particular, counsel relied on Articles 7 and 10(1) of the Covenant. These provide:-

> "*Article 7*
>
> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

and

> "*Article 10*
>
> 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

For the reasons that I have given earlier in my discussion of the effect of the various Articles of the European Convention on Human Rights, I do not consider that the applicant has been subjected to "cruel, inhuman or degrading treatment". Nor do I consider that he has been treated other than with "humanity and with respect for the inherent dignity of the human person". I am satisfied, therefore, that no breach of either Article has occurred. In those circumstances, it is unnecessary for me to consider whether the Secretary of State had regard to these provisions or whether, if she had failed to do so, that this would afford the applicant a basis on which to challenge her decision.

The application for judicial review is dismissed.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

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JUDGMENT

OF

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