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

COURT (CHAMBER)

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

*(Application no. 5856/72)*

JUDGMENT

STRASBOURG

25 April 1978

**In the Tyrer case,**

The European Court of Human Rights sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") and Rule 21 of the Rules of Court, as a Chamber composed of the following judges:

Mr. G. BALLADORE PALLIERI, *President*,
Mr. J. CREMONA,
Mrs. H. PEDERSEN,
Mr. Thór VILHJÁLMSSON,
Sir Gerald FITZMAURICE,
Mr. P.-H. TEITGEN,
Mr. F. MATSCHER,
and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private from 17 to 19 January and on 14 and 15 March 1978,

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

## PROCEDURE

1. The Tyrer case was referred to the Court by the European Commission of Human Rights (hereinafter referred to as "the Commission"). The case originated in an application against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on 21 September 1972 under Article 25 (art. 25) of the Convention by a United Kingdom citizen, Mr. Anthony M. Tyrer.

2. The Commission's request, to which was attached the report provided for under Article 31 (art. 31) of the Convention, was lodged with the registry of the Court on 11 March 1977, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47). The request referred to:

- Articles 44 and 48 (art. 44, art. 48);
- the declaration of 12 September 1967 made by the United Kingdom recognising, in respect of certain territories (including the Isle of Man) for whose international relations it was responsible, the compulsory jurisdiction of the Court (Article 46) (art. 46);
- the subsequent renewals of that declaration and particularly the renewal dated 21 April 1972 which was in force at the time the application was lodged with the Commission.

The purpose of the Commission's request is to obtain a decision from the Court as to whether or not the facts of the case disclose a breach by the respondent State of its obligations under Article 3 (art. 3) of the Convention.

3. The Chamber of seven judges to be constituted included, as ex officio members, Sir Gerald Fitzmaurice, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr. G. Balladore Pallieri, the President of the Court (Rule 21 para. 3 (b) of the Rules of Court). On 23 March 1977, the President of the Court drew by lot, in the presence of the Deputy Registrar, the names of the five other members, namely Mr. J. Cremona, Mrs. H. Pedersen, Mr. Thór Vilhjálmsson, Mr. P.-H. Teitgen and Mr. F. Matscher (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Mr. Balladore Pallieri assumed the office of President of the Chamber (Rule 21 para. 5).

4. The President of the Chamber ascertained, through the Registrar, the views of the Agent of the Government of the United Kingdom (hereinafter called "the Government") and the delegates of the Commission regarding the procedure to be followed; having regard to their concurring statements, the President decided by an Order of 28 June 1977 that it was not necessary at that stage for memorials to be filed. He also instructed the Registrar to invite the Commission to produce certain documents and these were received at the registry on 7 July.

5. After consulting, through the Registrar, the Agent of the Government and the delegates of the Commission, the President decided by an Order of 1 August 1977 that the oral hearings should open on 17 January 1978.

6. By letter of 1 December 1977, the Agent of the Government transmitted a request by the Government of the Isle of Man that the Chamber should carry out an investigation on the spot in the Island pursuant to Rule 38 para. 2 of the Rules of Court. The purpose of the visit as envisaged by the Government of the Isle of Man was that the Court should "become acquainted at first hand with local circumstances and requirements in the Isle of Man, having regard to Article 63 para. 3 (art. 63-3) of the Convention, by meeting ... leading members of the Manx community".

At a meeting held in private in Strasbourg on 13 December 1977, the Chamber resolved to defer its decision on this request until after the oral hearings.

7. The oral hearings were held in public at the Human Rights Building, Strasbourg, on 17 January 1978.

There appeared before the Court:

- for the Government:

Mr. D.H. ANDERSON, Legal Counsellor,
Foreign and Commonwealth Office, *Agent*,
Mr. L.J. BLOM-COOPER, Q.C.,
Mr. J.W. CORRIN, Attorney-General, Isle of Man,

Mr. A. COLLINS, Barrister-at-Law, *Counsel*,
Mrs. S.A. EVANS, Legal Advisers' Branch, Home Office,
Mr. J.W.C. HAINES, Treasury Solicitor's Department, *Advisers*;
- for the Commission:
Mr. L. KELLBERG, *Principal Delegate*,
Mr. K. MANGAN, *Delegate*.

The Court heard Mr. Kellberg for the Commission and Mr. Blom-Cooper and Mr. Corrin for the Government; Mr. Corrin addressed the Court on the relevant circumstances pertaining in the Isle of Man.

At the hearing, the Government produced certain documents to the Court and the Attorney-General for the Isle of Man renewed the request that an investigation on the spot be carried out in accordance with Rule 38 para. 2.

8. During its deliberations from 17 to 19 January 1978, the Chamber decided that the very fully information which had been supplied to the Court concerning this case rendered it unnecessary to carry out the investigation requested. The President informed the Agent of the Government of this decision on 19 January.

## AS TO THE FACTS

### A. The applicant's punishment

9. Mr. Anthony M. Tyrer, a citizen of the United Kingdom born on 21 September 1956, is resident in Castletown, Isle of Man. On 7 March 1972, being then aged 15 and of previous good character, he pleaded guilty before the local juvenile court to unlawful assault occasioning actual bodily harm to a senior pupil at his school. The assault, committed by the applicant in company with three other boys, was apparently motivated by the fact that the victim had reported the boys for taking beer into the school, as a result of which they had been caned. The applicant was sentenced on the same day to three strokes of the birch in accordance with the relevant legislation (see paragraph 11 below).

He appealed against sentence to the Staff of Government Division of the High Court of Justice of the Isle of Man. The appeal was heard and dismissed on the afternoon of 28 April 1972; the court considered that an unprovoked assault occasioning actual bodily harm was always very serious and that there were no reasons for interfering with the sentence. The court had ordered the applicant to be medically examined in the morning of the same day and had before it a doctor's report that the applicant was fit to receive the punishment.

10. After waiting in a police station for a considerable time for a doctor to arrive, Mr. Tyrer was birched late in the afternoon of the same day. His father and a doctor were present. The applicant was made to take down his trousers and underpants and bend over a table; he was held by two policemen whilst a third administered the punishment, pieces of the birch breaking at the first stroke. The applicant's father lost his self-control and after the third stroke "went for" one of the policemen and had to be restrained.

The birching raised, but did not cut, the applicant's skin and he was sore for about a week and a half afterwards.

11. The applicant was sentenced pursuant to section 56 (1) of the Petty Sessions and Summary Jurisdiction Act 1927 (as amended by section 8 of the Summary Jurisdiction Act 1960) whereby:

> "Any person who shall -
>
> (a) unlawfully assault or beat any other person;
>
> (b) make use of provoking language or behaviour tending to a breach of the peace, shall be liable on summary conviction to a fine not exceeding thirty pounds or to be imprisoned for a term not exceeding six months and, in addition to, or instead of, either such punishment, if the offender is a male child or male young person, to be whipped."

The expressions "child" and "young person" mean, respectively, an individual of or over the age 10 and under 14 and an individual of or over the age of 14 and under 17.

12. Execution of the sentence was governed by the following provisions:

> **(a) Section 10 of the Summary Jurisdiction Act 1960**
>
> "(a) the instrument used shall, in the case of a child, be a cane, and in any other case shall be a birch rod;
>
> (b) the court in its sentence shall specify the number of strokes to be inflicted, being in the case of a child not more than six strokes, and in the case of any other person not more than twelve strokes;
>
> (c) the whipping shall be inflicted privately as soon as practicable after sentence and in any event shall not take place after the expiration of six months from the passing of the sentence;
>
> (d) the whipping shall be inflicted by a constable in the presence of an inspector or other officer of police of higher rank than a constable, and, in the case of a child or young person, also in the presence if he desires to be present, of the parent or guardian of the child or young person."
>
> **(b) Directive of the Lieutenant-Governor, dated 30 May 1960**
>
> "l. The instruments to be used shall be: -

(i) in the case of a male child who is under the age of 14 years, a light cane not exceeding four feet in length and not exceeding half an inch in diameter,

and

(ii) in the case of a male person who is of the age of 14 years but is under the age of 21 years a birch rod of the following dimensions:

Weight not exceeding 9 ounces

Length from end of handle to tip of spray 40 inches

Length of handle 15 inches

Circumference of spray at centre 6 inches

Circumference of handle at top of binding 3 1/2 inches

Circumference of handle 6 inches from end 3 1/4 inches

2. In all cases where a Court is empowered to impose a sentence of whipping a medical report as to whether the offender is fit to receive the punishment will be made available to the Magistrates before they consider sentence. Arrangements for this report will be made by the Clerk of the Court.

3. The whipping shall be inflicted on the posterior over the child's ordinary cloth trousers.

4. A medical practitioner shall be present during a birching and may at his discretion order the stopping of the punishment at any time. Where a birching has been stopped on medical grounds a report of the facts shall be forwarded immediately to His Excellency."

With reference to paragraph 3 of the Directive, the Court was advised at the hearing on 17 January 1978 that, in the light of the Commission's report, an amendment had recently been made by the Isle of Man Government whereby the punishment is to be administered over ordinary cloth trousers in all cases irrespective of the offender's age.

## B. General background

13. The Isle of Man is not a part of the United Kingdom but a dependency of the Crown with its own government, legislature and courts and its own administrative, fiscal and legal systems. The Crown is ultimately responsible for the good government of the Island and acts in this respect through the Privy Council on the recommendation of Ministers of the United Kingdom Government in their capacity as Privy Counsellors. In that capacity, the Home Secretary is charged with prime responsibility for Isle of Man affairs.

Prior to October 1950, the United Kingdom Government regarded international treaties applicable to the United Kingdom as extending, in the absence of contrary provision, to the Isle of Man. Thereafter, they no longer so regarded such treaties unless there were an express inclusion and they treated the Island as a territory for whose international relations they were responsible. In fact, by letter dated 23 October 1953 addressed to the Secretary-General of the Council of Europe, the Government of the United Kingdom declared, in accordance with Article 63 (art. 63) of the Convention, that the Convention should extend to a number of such territories, including the Isle of Man.

The Island's parliament, the Court of Tynwald, is one of the oldest in Europe. It consists of a Lieutenant-Governor appointed by and representing the Crown, an Upper House (the Legislative Council) and a Lower House (the House of Keys). Tynwald legislates in domestic matters, the laws it adopts requiring ratification by the Queen in Council; the Home Secretary is responsible for advising the Privy Council whether or not to recommend that the Royal Assent be given.

In strict law, the United Kingdom Parliament has full power to pass laws applicable to the Isle of Man but, by constitutional convention, does not in the ordinary course legislate on the Island's domestic affairs, such as penal policy, without its consent. This convention would be followed unless it were overridden by some other consideration, an example of which would be an international treaty obligation.

14. Judicial corporal punishment of adults and juveniles was abolished in England, Wales and Scotland in 1948 and in Northern Ireland in 1968. That abolition followed upon the recommendations of the Departmental Committee on Corporal Punishment (known as the Cadogan Committee) which issued its report in 1938. The standing Advisory Council on the Treatment of Offenders, in its report of 1960 (known as the Barry report), endorsed the findings of the Cadogan Committee and concluded that corporal punishment should not be reintroduced as a judicial penalty in respect of any categories of offencers or of offenders.

15. The punishment remained in existence in the Isle of Man. When Tynwald examined the question in 1963 and 1965, it decided to retain judicial corporal punishment, which was considered a deterrent to hooligans visiting the Island as tourists and, more generally, a means of preserving law and order.

In May 1977, by thirty-one votes for and only one against, Tynwald passed a resolution, inter alia,

> "that the retention of the use of judicial corporal punishment for crimes of violence to the person is a desirable safeguard in the control of law and order in this Island and Tynwald hereby re-affirms its policy to retain the use of judicial corporal punishment for violent crimes to the person committed by males under the age of 21".

At the hearing on 17 January 1978, the Attorney-General for the Isle of Man informed the Court that recently a privately organised petition in favour of the retention of judicial corporal punishment had obtained 31,000 signatures from amongst the approximate total of 45,000 persons entitled to vote on the Island.

16. While under various provisions judicial corporal punishment could be imposed on males for a number of offences, since 1969 its application has apparently been restricted in practice to offences of violence.

During his address to the Court, the Attorney-General for the Isle of Man indicated that the Manx legislature would shortly be considering the Criminal Law Bill 1978 which contained a proposal to limit the use of judicial corporal punishment to young males for certain specified offences only, on the whole the more serious offences of violence. The offence with which the applicant was charged had been omitted from the specified list of offences.

17. The name and address of a juvenile sentenced in the Isle of Man, whether to corporal punishment or otherwise, are not published.

18. According to figures cited before the Court by the Attorney- General for the Isle of Man, judicial corporal punishment was inflicted in 2 cases in 1966, in 4 cases in 1967, in 1 case in 1968, in 7 cases in 1969, in 3 cases in 1970, in 0 cases in 1971, in 4 cases in 1972, in 0 cases in 1973, in 2 cases in 1974, in 1 case in 1975, in 1 case in 1976 and in 0 cases in 1977. The average number of crimes of violence to the person per annum was: between 1966 and 1968 - 35; between 1969 and 1971 - 52; between 1972 and 1974 - 59; and between 1975 and 1977 - 56. In 1975 there were 65 crimes of violence to the person, in 1976 58 and in 1977 approximately 46.

In the three years 1975 to 1977, only one young male was convicted of a crime of violence.

At the 1976 census, the Island’s population stood at 60,496.

## PROCEEDINGS BEFORE THE COMMISSION

19. In his application, lodged with the Commission on 21 September 1972, Mr. Tyrer complained, in particular, that:

- his judicial corporal punishment constituted a breach of Article 3 (art. 3) of the Convention;
- such punishment was destructive of family well-being and therefore contrary to Article 8 (art. 8) of the Convention;
- no remedies existed to rectify the violation, which was inconsistent with Article 13 (art. 13) of the Convention;

- the punishment was discriminatory within the meaning of Article 14 (art. 14) of the Convention in that it was primarily pronounced on persons from financially and socially deprived homes;

- the violation of Article 3 (art. 3) also constituted a violation of Article 1 (art. 1) of the Convention.

The applicant also claimed damages as well as repeal of the legislation concerned.

20. In its decision of 19 July 1974, the Commission, having considered ex officio that the facts of the case raised issues of discrimination on grounds of sex and/or age contrary to Article 14 of the Convention, taken together with Article 3 (art. 14+3):

- decided not to proceed further with an examination of the original complaint under Article 14 (art. 14) which the applicant had subsequently withdrawn;

- declared admissible and retained those parts of the application which raised issues under Article 3 (art. 3), either alone or in conjunction with Article 14 (art. 14+3);

- declared inadmissible the remainder of the application.

21. In January 1976, the Commission was notified that the applicant wished to withdraw his application. However, on 9 March 1976, the Commission decided that it could not accede to this request "since the case raised questions of a general character affecting the observance of the Convention which necessitated a further examination of the issues involved". The applicant took no further part in the proceedings.

22. In its report of 14 December 1976, the Commission expressed the opinion:

- by fourteen votes to one, that the judicial corporal punishment inflicted on the applicant was degrading and was in breach of Article 3 (art. 3) of the Convention;

- that it was not necessary, in view of the preceding conclusion, to pursue an examination of the issue under Article 14 (art. 14) of the Convention;

- as regards Article 63 para. 3 (art. 63-3) of the Convention, that there were not any significant social or cultural differences between the Isle of Man and the United Kingdom which could be relevant to the application of Article 3 (art. 3) in the present case.

The report contains one separate opinion.

# AS TO THE LAW

## I. PRELIMINARY QUESTIONS

### A. The Court's jurisdiction

23. During the hearing of 17 January 1978, reference was made to the fact that the declaration by the Government recognising the jurisdiction of the Court as compulsory in respect of the Isle of Man expired on 13 January 1976, whereas the case was brought before the Court by the Commission on 11 March 1977.

In its request to the Court, the Commission indicated that it had had regard to the various renewals of the said declaration and particularly the renewal dated 21 April 1972 which was in force at the time of the introduction of the application before the Commission. For their part, the Government, which had not filed any preliminary objection pursuant to Rule 46 of the Rules of Court, stated at the hearing that they consented to the Court having jurisdiction in accordance with Article 48 (art. 48), although it was not to be inferred that they necessarily agreed with the reasoning in the Commission's request.

The Court finds that in these circumstances its jurisdiction is established.

### B. The request to strike the case out of the Court's list

24. The Attorney-General for the Isle of Man first submitted that the Court should strike the case out of its list in view of the fact that Mr. Tyrer, who had lodged his application with the Commission when he was under age, had declared, after he had attained full age, that he wished to withdraw it.

On 9 March 1976, the Commission had decided, pursuant to the then Rule 43 of its Rules of Procedure, that it could not accede to the applicant's request since the case raised questions of a general character affecting the observance of the Convention which necessitated a further examination of the issues involved (see paragraph 21 above). Before the Court, the principal delegate submitted that the applicant's wishes must be subordinated to the general interest to ensure respect for human rights as defined in the Convention. He added that the Commission had never examined the reasons for, and circumstances surrounding, the applicant's request.

The Attorney-General for the Isle of Man conceded that, under its Rules of Procedure, the Commission was entitled to refuse, on the grounds

mentioned above, to allow Mr. Tyrer to withdraw. He did not suggest that there had been any irregularity in the Commission's decision; he merely contended that in the particular circumstances the applicant's wishes should supersede the general character of the case and that therefore the Court should consider striking the case out of its list under Rule 47 of its Rules.

25. The regularity of the Commission's decision to continue its examination of the application is not in issue and the Court has only to decide whether or not the case should be struck out.

Paragraph 1 of Rule 47 is not applicable in the circumstances. Firstly, when Mr. Tyrer declared that he wished to withdraw his application the case was still pending before the Commission. Secondly that declaration, coming from an individual who is not entitled under the Convention to refer cases to the Court, cannot entail the effects of a discontinuance of the present proceedings (De Becker judgment of 27 March 1962, Series A no. 4, p. 23, para. 4). Above all, paragraph 1 covers solely discontinuance by "a Party which has brought the case before the Court", that is to say by an Applicant Contracting State in proceedings before the Court (paragraph (h) of Rule 1; Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, p. 21, para. 47).

Paragraph 2 of Rule 47 provides that the Court may, subject to paragraph 3, strike out of its list a case brought before it by the Commission but only when the Court "is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter". As mentioned above, the Commission never examined the circumstances surrounding the applicant's request and the Court has been supplied with no further information regarding those circumstances. Thus, the Court has received no indication that Mr. Tyrer's declaration of withdrawal is a fact of a kind to provide a solution of the matter.

26. The Attorney-General for the Isle of Man further submitted that the Court should strike the case out of its list when the Island's legislature had adopted the proposal to abolish corporal punishment as a penalty for, inter alia, the offence of assault occasioning actual bodily harm of which the applicant had been convicted (see paragraph 16 above). The principal delegate emphasised that nothing short of total abolition of judicial corporal punishment would, in the view of the Commission, be acceptable as a "fact of a kind to provide a solution of the matter" in the context of Rule 47 (2).

The Court does not consider that the legislation envisaged can be regarded as such a fact. There is no certainty as to whether and when the proposal will become law and, even if adopted, it cannot erase a punishment already inflicted. What is more, the proposed legislation does not go to the substance of the issue before the Court, namely whether judicial corporal punishment as inflicted on the applicant in accordance with Manx legislation is contrary to the Convention.

27. Accordingly, the Court decides not to strike the case out of its list on either of the grounds advanced.

## II. ON ARTICLE 3 (art. 3)

28. The applicant claimed before the Commission that the facts of his case constituted a breach of Article 3 (art. 3) of the Convention which provides:

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

He alleged that there had been torture or inhuman or degrading treatment or punishment, or any combination thereof.

In its report, the Commission expressed the opinion that judicial corporal punishment, being degrading, constituted a breach of Article 3 (art. 3) and that, consequently, its infliction on the applicant was in violation of that provision.

29. The Court shares the Commission's view that Mr. Tyrer's punishment did not amount to "torture" within the meaning of Article 3 (art. 3). The Court does not consider that the facts of this particular case reveal that the applicant underwent suffering of the level inherent in this notion as it was interpreted and applied by the Court in its judgment of 18 January 1978 (Ireland v. the United Kingdom, Series A no. 25, pp. 66-67 and 68, paras. 167 and 174).

That judgment also contains various indications concerning the notions of "inhuman treatment" and "degrading treatment" but it deliberately left aside the notions of "inhuman punishment" and "degrading punishment" which alone are relevant in the present case (ibid., p. 65, para. 164). Those indications accordingly cannot, as such, serve here. Nevertheless, it remains true that the suffering occasioned must attain a particular level before a punishment can be classified as "inhuman" within the meaning of Article 3 (art. 3). Here again, the Court does not consider on the facts of the case that that level was attained and it therefore concurs with the Commission that the penalty imposed on Mr. Tyrer was not "inhuman punishment" within the meaning of Article 3 (art. 3). Accordingly, the only question for decision is whether he was subjected to a "degrading punishment" contrary to that Article (art. 3).

30. The Court notes first of all that a person may be humiliated by the mere fact of being criminally convicted. However, what is relevant for the purposes of Article 3 (art. 3) is that he should be humiliated not simply by his conviction but by the execution of the punishment which is imposed on him. In fact, in most if not all cases this may be one of the effects of judicial punishment, involving as it does unwilling subjection to the demands of the penal system.

However, as the Court pointed out in its judgment of 18 January 1978 in the case of Ireland v. the United Kingdom (Series A no. 25, p. 65, para. 163), the prohibition contained in Article 3 (art. 3) of the Convention is absolute: no provision is made for exceptions and, under Article 15 (2) (art. 15-2) there can be no derogation from Article 3 (art. 3). It would be absurd to hold that judicial punishment generally, by reason of its usual and perhaps almost inevitable element of humiliation, is "degrading" within the meaning of Article 3 (art. 3). Some further criterion must be read into the text. Indeed, Article 3 (art. 3), by expressly prohibiting "inhuman" and "degrading" punishment, implies that there is a distinction between such punishment and punishment in general.

In the Court's view, in order for a punishment to be "degrading" and in breach of Article 3 (art. 3), the humiliation or debasement involved must attain a particular level and must in any event be other than that usual element of humiliation referred to in the preceding subparagraph. The assessment is, in the nature of things, relative: it depends 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 Attorney-General for the Isle of Man argued that the judicial corporal punishment at issue in this case was not in breach of the Convention since it did not outrage public opinion in the Island. However, even assuming that local public opinion can have an incidence on the interpretation of the concept of "degrading punishment" appearing in Article 3 (art. 3), the Court does not regard it as established that judicial corporal punishment is not considered degrading by those members of the Manx population who favour its retention: it might well be that one of the reasons why they view the penalty as an effective deterrent is precisely the element of degradation which it involves. As regards their belief that judicial corporal punishment deters criminals, it must be pointed out that a punishment does not lose its degrading character just because it is believed to be, or actually is, an effective deterrent or aid to crime control. Above all, as the Court must emphasise, it is never permissible to have recourse to punishments which are contrary to Article 3 (art. 3), whatever their deterrent effect may be.

The Court must also recall that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field. Indeed, the Attorney-General for the Isle of Man mentioned that, for many years, the provisions of Manx legislation concerning judicial corporal punishment had been under review.

32. As regards the manner and method of execution of the birching inflicted on Mr. Tyrer, the Attorney-General for the Isle of Man drew

particular attention to the fact that the punishment was carried out in private and without publication of the name of the offender.

Publicity may be a relevant factor in assessing whether a punishment is "degrading" within the meaning of Article 3 (art. 3), but the Court does not consider that absence of publicity will necessarily prevent a given punishment from falling into that category: it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others.

The Court notes that the relevant Isle of Man legislation, as well as giving the offender a right of appeal against sentence, provides for certain safeguards. Thus, there is a prior medical examination; the number of strokes and dimensions of the birch are regulated in detail; a doctor is present and may order the punishment to be stopped; in the case of a child or young person, the parent may attend if he so desires; the birching is carried out by a police constable in the presence of a more senior colleague.

33. Nevertheless, the Court must consider whether the other circumstances of the applicant's punishment were such as to make it "degrading" within the meaning of Article 3 (art. 3).

The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalised violence that is in the present case violence permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State (see paragraph 10 above). Thus, although the applicant did not suffer any severe or long-lasting physical effects, his punishment - whereby he was treated as an object in the power of the authorities - constituted an assault on precisely that which it is one of the main purposes of Article 3 (art. 3) to protect, namely a person's dignity and physical integrity. Neither can it be excluded that the punishment may have had adverse psychological effects.

The institutionalised character of this violence is further compounded by the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender.

Admittedly, the relevant legislation provides that in any event birching shall not take place later than six months after the passing of sentence. However, this does not alter the fact that there had been an interval of several weeks since the applicant's conviction by the juvenile court and a considerable delay in the police station where the punishment was carried out. Accordingly, in addition to the physical pain he experienced, Mr. Tyrer was subjected to the mental anguish of anticipating the violence he was to have inflicted on him.

34. In the present case, the Court does not consider it relevant that the sentence of judicial corporal punishment was imposed on the applicant for an offence of violence. Neither does it consider it relevant that, for Mr. Tyrer, birching was an alternative to a period of detention: the fact that one penalty may be preferable to, or have less adverse effects or be less serious

than, another penalty does not of itself mean that the first penalty is not "degrading" within the meaning of Article 3 (art. 3).

35. Accordingly, viewing these circumstances as a whole, the Court finds that the applicant was subjected to a punishment in which the element of humiliation attained the level inherent in the notion of "degrading punishment" as explained at paragraph 30 above. The indignity of having the punishment administered over the bare posterior aggravated to some extent the degrading character of the applicant's punishment but it was not the only or determining factor.

The Court therefore concludes that the judicial corporal punishment inflicted on the applicant amounted to degrading punishment within the meaning of Article 3 (art. 3) of the Convention.

## III. ON ARTICLE 63 (art. 63)

36. The Court must now consider whether its above conclusion is affected by certain arguments advanced under Article 63 of the Convention, paragraphs 1 and 3 whereof (art. 63-1, art. 63-3) read as follows:

> "1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.
>
> ...
>
> 3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements."

37. In respect of Article 63 (3) (art. 63-3), the Attorney-General for the Isle of Man submitted to the Court:

> "firstly that judicial corporal punishment as practised in the Isle of Man in the case of the applicant is not a degrading punishment and that the United Kingdom is not in breach of the Convention by virtue of Article 63 (3) (art. 63-3); secondly ... that, having due regard to the local circumstances in the Island ... the continued use of judicial corporal punishment on a limited scale is justified as a deterrent and consequently the United Kingdom would not be in breach of the Convention."

The Attorney-General relied in particular on the state of opinion in the Island and referred, inter alia, to a recent debate in the Manx legislature and a recent petition both of which had indicated that there was a large majority in favour of retention of judicial corporal punishment in specified circumstances (see paragraph 15 above). That majority, he said, not only did not consider this penalty to be degrading but also saw it as an effective deterrent and as a desirable safeguard in the control of law and order. He also cited statistics in support of these views (see paragraph 18 above).

The principal delegate of the Commission submitted, as regards local conditions in the Isle of Man, that it was difficult to conceive that any local

characteristics could be put forward to justify a breach of Article 3 (art. 3). He pointed out that no specific local conditions had been pleaded save the belief of many people in the Isle of Man that judicial corporal punishment is an effective deterrent and added that, even assuming that such a belief could constitute a local condition, the Commission did not consider that if affected its conclusion of a violation of Article 3 (art. 3). Finally, he stated that the Commission's view that there were no significant social or cultural differences between the Isle of Man and the United Kingdom which could be relevant to the application of Article 3 (art. 3) in this case amounted to saying that Article 63 (3) (art. 63-3) in fact cannot be called in aid as regards territories with such close ties and affinities as in the case of the Isle of Man and the United Kingdom.

38. The question therefore is to decide whether there are in the Isle of Man local requirements within the meaning of Article 63 (3) (art. 63-3) such that the penalty in question, in spite of its degrading character (see paragraph 35 above), does not entail a breach of Article 3 (art. 3).

The Court notes firstly that the Attorney-General for the Isle of Man spoke more of circumstances and conditions than of requirements in the Island. The undoubtedly sincere beliefs on the part of members of the local population afford some indication that judicial corporal punishment is considered necessary in the Isle of Man as a deterrent and to maintain law and order. However, for the application of Article 63 (3) (art. 63-3), more would be needed: there would have to be positive and conclusive proof of a requirement and the Court could not regard beliefs and local public opinion on their own as constituting such proof.

Moreover, even assuming that judicial corporal punishment did possess those advantages which are attributed to it by local public opinion, there is no evidence before the Court to show that law and order in the Isle of Man could not be maintained without recourse to that punishment. In this connection, it is noteworthy that, in the great majority of the member States of the Council of Europe, judicial corporal punishment is not, it appears, used and, indeed, in some of them, has never existed in modern times; in the Isle of Man itself, as already mentioned, the relevant legislation has been under review for many years. If nothing else, this casts doubt on whether the availability of this penalty is a requirement for the maintenance of law and order in a European country. The Isle of Man not only enjoys long-established and highly-developed political, social and cultural traditions but is an up-to-date society. Historically, geographically and culturally, the Island has always been included in the European family of nations and must be regarded as sharing fully that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble to the Convention refers. The Court notes, in this connection, that the system established by Article 63 (art. 63) was primarily designed to meet the fact that, when the Convention was drafted, there were still certain colonial

territories whose state of civilisation did not, it was thought, permit the full application of the Convention.

Finally and above all, even if law and order in the Isle of Man could not be maintained without recourse to judicial corporal punishment, this would not render its use compatible with the Convention. As the Court has already recalled, the prohibition contained in Article 3 (art. 3) is absolute and, under Article 15 (2) (art. 15-2), the Contracting States may not derogate from Article 3 (art. 3) even in the event of war or other public emergency threatening the life of the nation. Likewise, in the Court's view, no local requirement relative to the maintenance of law and order would entitle any of those States, under Article 63 (art. 63), to make use of a punishment contrary to Article 3 (art. 3).

39. For these reasons, the Court finds that there are no local requirements affecting the application of Article 3 (art. 3) in the Isle of Man and, accordingly, that the applicant's judicial corporal punishment constituted a violation of that Article.

40. In view of its above conclusion, the Court does not consider it necessary to examine, in connection with Article 63 (1) (art. 63-1), the question of the constitutional status of the Isle of Man in relation to the United Kingdom.

## IV. ON ARTICLE 14 (art. 14)

41. Article 14 (art. 14) of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in this 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."

42. In its decision of 19 July 1974, the Commission, having considered ex officio that the facts of the case involved questions of discrimination on grounds of sex and/or age, declared admissible and retained those parts of the application which raised issues under Article 3 in conjunction with Article 14 (art. 14+3). However, in its report of 14 December 1976 the Commission concluded that it was not necessary to pursue an examination of this question: it was sufficient that the Commission had concluded that there was a violation of Article 3 (art. 3) in this case and that, therefore, judicial corporal punishment should not have been applied to anybody. Moreover, the Commission did not advert to the matter either in its request of 11 March 1977 to the Court or at the oral hearing. The Government also addressed no argument to the Court on this issue.

43. The Court notes the position taken by those appearing before it. In the circumstances of the case, the Court does not consider that it is necessary for it to examine this question ex officio.

## V. ON ARTICLE 50 (art. 50)

44. Article 50 (art. 50) of the Convention provides:

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

45. In his application to the Commission, Mr. Tyrer had claimed damages. However, at the hearing on 17 January 1978, the principal delegate remarked that, because there was no longer an applicant associated with the case, no issue under Article 50 (art. 50) could, in the Commission's opinion, arise.

The Court regards this question as ready for decision. It shares the view of the Commission and accordingly considers that it is not necessary to apply Article 50 (art. 50) in the present case.

## FOR THESE REASONS, THE COURT

1. decides unanimously not to strike the case out of its list;

2. holds by six votes to one that the judicial corporal punishment inflicted on Mr. Tyrer amounted to degrading punishment within the meaning of Article 3 (art. 3);

3. holds unanimously that in the present case there are no local requirements within the meaning of Article 63 para. 3 (art. 63-3) which could affect the application of Article 3 (art. 3);

4. holds by six votes to one that the said punishment accordingly violated Article 3 (art. 3);

5. holds unanimously that it is not necessary to examine the question of a possible violation of Article 3 taken together with Article 14 (art. 14+3);

6. holds unanimously that it is not necessary to apply Article 50 (art. 50) in the present case.

Done in English and French, the English text being authentic, at the Human Rights Building, Strasbourg, this twenty-fifth day of April, one thousand nine hundred and seventy-eight.

Giorgio BALLADORE PALLIERI
President

On behalf of the Registrar
Herbert PETZOLD
Deputy Registrar

Judge Sir Gerald Fitzmaurice has annexed his separate opinion to the present judgment in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 50 para. 2 of the Rules of Court.

G. B. P.
H. P.

# SEPARATE OPINION OF JUDGE SIR GERALD FITZMAURICE

1. To my regret, I feel obliged to dissent from the view taken by the Court on what is the main issue in this case, namely whether the punishment inflicted on Mr. Tyrer - he being then a schoolboy - amounted to a "degrading" punishment contrary to Article 3 (art. 3) of the European Human Rights Convention. However, I can at least address myself exclusively to that matter since, while not necessarily agreeing in toto on every other question - in particular that of paragraph 3 of Article 63 (art. 63-3) (due regard to be paid to local requirements in the case of non-metropolitan territories) – I did not feel called upon actually to vote against the conclusions reached by the Court on points not directly arising on Article 3 (art. 3). Moreover, in view of the fact that the Court has found (correctly in my opinion) that Mr. Tyrer's punishment did not amount either to torture or to inhuman treatment, I need not deal with those matters except in so far as, in a general way, they are relevant to what I want to say on the third component of Article 3 (art. 3) - degrading treatment or punishment. The more specific aspects of torture and inhuman treatment I considered in some detail in the recent case of Ireland v. the United Kingdom (Judgment of 18 January 1978), which I shall hereafter refer to as the "Irish case".

2. Before I go any further, however, I want to make it clear that my attitude to the present case is governed by the fact that the punishment complained of was administered to a juvenile. Just as in the recent Handyside ("Little Red Schoolbook") case[1] the key element involved was that sex literature which would have been more or less innocuous if disseminated amongst adults was specifically intended for and circulated to juveniles of school age, - so in my view does the key to the present case lie in the infliction of the punishment - not on an adult, but on a juvenile.

3. As regards torture and inhuman treatment, further reflection on the Irish case has led me to doubt whether it is either practicable or right to regard these notions - (and the same would apply to those of degrading treatment or punishment) - as having the absolute and monolithic character which, on a literal reading of Article 3 (art. 3), they appear to have - as the Court has held in both the Irish and the present case, and as I admitted in paragraph 14 of my Separate Opinion in the former case. As I there stated, it is easy to see why those who drew up the Convention proceeded in this manner: not only would an appropriate definition have been as difficult to frame as in the celebrated case of the definition of aggression, but also any attempted definition (as equally in the latter case) would almost inevitably have tended to suggest the means for its own evasion. But this in no way denotes that because the function of interpreting and applying these notions

[1] Judgment of 7 December 1976.

is, in consequence, perforce left to judicial determination, the tribunal invested with that function can take refuge in a literal interpretation of the words of the Article without regard to the special circumstances of the concrete case. Indeed it is precisely because of the difficulty of arriving at any definition that will take account in advance of all the possibilities which may occur, that the obligation to do so in the particular case falls upon the tribunal. This the Court has recognised up to a point by applying the test of the degree of severity that the impugned treatment involves; but that is far from being the only factor that may be relevant, and even in applying that test, the tribunal must consider such aspects as the age, general health, bodily characteristics and current physical and mental condition of the person concerned, or other actual features of the case, any one of which may either increase or diminish the intensity of the effect produced.

4. Nor is it only under these heads that some gloss has to be put upon the absolute character of the literal terms of Article 3 (art. 3). Thus it is to be noted that these, in speaking of "punishment", do so only in connection with the expressions "inhuman" and "degrading", not in connection with "torture". Apart from the grammatical difficulties of using the latter term as an adjective, the reason clearly is that torture is as often, if not more often, inflicted for other purposes - such as intimidation, compulsion, extraction of information, etc. - as for purposes of punishment - (in the case of the inhuman or the degrading these other purposes are met by the use of the word "treatment" as well as "punishment", but neither term is employed in connection with the expression "torture"). Hence, if Article 3 (art. 3) is interpreted literally, any infliction of pain severe enough in degree to amount to torture would involve a breach of that provision whatever the circumstances in which it had occurred, - for instance, the case of an army surgeon who amputates a leg on the battlefield under emergency conditions and without an anaesthetic. In all such cases (and others can easily be thought of - see footnote 2[2], the "victim" is, according to the ipsissima verba of Article 3 (art. 3), "subjected to torture" which the Article states that "No one may be" - ever, even if in certain instances, or up to a point, the subjection is voluntarily accepted.

5. Cases of this kind also show that the gloss that has to be placed upon the literal effect of the Article relates not only to what constitutes or amounts to torture, etc., but to what may in certain circumstances justify its

[2] For example:
the member of a rescue party who has to inflict agonising pain in order to release a trapped limb;
the monk who endures severe flagellation at the hands of his superiors as a reigious or claustral penance or discipline;
the infliction of severe mental torture by the withholding of news the premature communication of which might be prejudicial to success;
the dentist who cannot give a pain-killing injection because of the patient's allergy to it.

infliction, such as encompassing the greater good of saving the life of the recipient; - or, in certain types of cases, the saving of a great many other lives. This last matter is one of much difficulty and delicacy on which it is all too easy to go wrong. I touched upon it in the third paragraph of footnote 19 in my Separate Opinion in the Irish case (see paragraph 1 supra), and will not enlarge upon it here since questions of torture or other kinds of inhuman treatment are not directly involved in the present case - (or at any rate the Judgment of the Court, with which I agree on these points, excludes them).

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6. What is at present involved is the question of degrading treatment or punishment, the principle of which I considered in some detail in paragraphs 27-29 of my Separate Opinion in the Irish case. But here too it is obviously not possible to apply the language of Article 3 (art. 3) literally. If, as now, the case is one of punishment, it is obvious that all punishment is degrading, at least if it involves imprisonment and the (mostly unpleasant and often humiliating) incidents of prison life and discipline. To amount to an infringement of Article 3 (art. 3) therefore, the punishment in question must entail a degree of degradation recognisably greater than that inherently bound-up with any normal punishment that takes the form of coercion or deprivation of liberty, - or else it must be accompanied by circumstances of degradation greater than what are necessary for the carrying-out of the punishment according to its due and intended effect. This has been expressly recognised by the Court in the passage figuring at the last section of paragraph 30 of the Judgment, which contains a statement of the relevant principle - one in which I fully concur.

7. The Court, however, then goes on to hold that what the passage I have just referred to calls the "level" of "humiliation or debasement involved" was in fact attained in the punishment inflicted on Mr. Tyrer when he was a boy, - and it is this conclusion with which I respectfully disagree - in part because, as I shall show presently, it is not in fact - (though it purports to be) - related to the actual circumstances of the punishment, but amounts to a finding that all corporal punishment, in all circumstances, inherently involves, as such, an unacceptable level of degradation. In this the Court seems to me to depart from its own criterion, stated in the passage concerned to be that the assessment of the element of degradation is "relative" and "depends on all the circumstances of the case, and in particular the nature and context of the punishment itself and the manner and method of its execution". After drawing attention to the fact (though it does not consider it conclusive) that the punishment was administered in

private, the Judgment next proceeds, if I have understood it correctly, to concede, in effect, that (subject to the basic question of the whole nature of corporal punishment) the methods and requirements prescribed by Isle of Man law for carrying-out such a punishment did provide for "certain safeguards", - and it is evident from the facts of the case that these safeguards were duly adhered to in the Tyrer case. The passages in question in the Judgment (last section of paragraph 32 and first of paragraph 33) read as follows: -

> "The Court notes that the relevant Isle of Man legislation, as well as giving the offender a right to appeal against [the] sentence, provides for certain safeguards. Thus, there is a prior medical examination; the number of strokes and dimensions of the birch are regulated in detail; a doctor is present and may order the punishment to be stopped; in the case of a child or young person, the parent may attend if he so desires; the birching is carried out by a police constable in the presence of a more senior colleague."

The Judgment continues (paragraph 33):

> "Nevertheless, the Court must consider whether the other circumstances of the applicant's punishment were such as to make it 'degrading' within the meaning of Article 3 (art. 3)." [3]

8. The "Nevertheless" at the start of this last passage shows that the Court considered the circumstances of the administering of the punishment as not in themselves calling for criticism, and had to look at "the other circumstances of the ... punishment" to see whether it was "degrading". But when the Judgment goes on to do that, it becomes perfectly plain that, for all practical purposes, it is not "the other circumstances of the punishment" at all, but the punishment itself, and as such, that the Court regards as degrading. This appears, but appears sufficiently, from only two sentences in the second section of paragraph 33, reading respectively:

> "The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being."

and

> "... his punishment - whereby he was treated as an object in the power of the authorities - constituted an assault on precisely that which it is one of the main

[3] "... within the meaning of Article 3 (art. 3)". I drew attention in paragraph 12 of my Separate Opinion in the Irish case to the fact that since Article 3 (art. 3) of the Convention does not define or explain in any way the terms it contains ("torture or ... inhuman or degrading treatment or punishment"), an expression such as "within the meaning of Article 3 (art. 3)" lacks all significance, as the Article ascribes no meaning to these terms. Any meaning to be given to them must come from outside. In these circumstances, it is the Court itself that has to impart a meaning. This is perfectly acceptable – indeed inevitable. But then it should not be implied that the meaning thus imparted is to be found in Article 3 (art. 3) itself, for it is not. A more correct description would be "contrary to" or "according to the presumed intention of" Article 3 (art. 3).

purposes of Article 3 (art. 3) to protect, namely a person's dignity and physical integrity."

These are tautologies that do not advance matters[4] and defeat their own ends, since they beg the question at issue, which is not whether the punishment was physically violent or was inflicted compulsorily, or even involved loss of dignity (as most punishment does), but was in the actual circumstances "degrading", and degrading to a degree which - to use the Court's own language - took it to a level above that "usual ... element of humiliation or degradation" which is an "almost inevitable element" of "judicial punishment generally" - (Judgment, paragraph 30, passim). It is only this kind of degradation of which it can properly be said to be "one of the main purposes of Article 3 (art. 3)" to condemn - or protect against - and mere affirmations that such is the case cannot of themselves carry conviction. What they do show is that, in the opinion of the Court, it is the fact of the punishment being corporal which makes it peccant, - and this is irrespective of such an obviously relevant circumstance as that it was administered to a juvenile not an adult. In short, it is the "corporality" of the punishment which is regarded as automatically causing it to stand at an unacceptable level of the degrading. I am unable to agree with this view of the matter which, for reasons of somewhat the same order as those that I gave in the Irish case (particularly in my paragraphs 22-36), seems to be exaggerated and out of proportion. But before I indicate more specifically my grounds for not regarding the punishment administered in the present case as amounting in the circumstances to a "degrading" one - or at the least as not involving the level of degradation necessary to constitute a breach of Article 3 (art. 3) - I must consider what were the "other" circumstances which the Court seems to have had in mind in the last of the passages I have quoted in paragraph 7 above.

9. The "other" circumstances (Judgment, paragraph 33 et seq.) – I have noted the following:

(i) In paragraph 33, much stress is placed on the fact that the "violence" was "institutionalised", i.e. "permitted by law"[5] and "carried out by the police authorities". For my part, I cannot see the relevance of this criterion,

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[4] Perhaps "truisms" would be a more accurate description, - for surely any prisoner is, by definition, "in the power" of the authorities, - while it goes without saying that judicial corporal punishment involves the infliction of physical violence by one person on another: even science fiction has not yet pictured a world in which it is inflicted by machines. Again, it goes without saying that if a thug attacks someone in a dark passage, there is certainly "an assault on" the victim's "physical integrity", and this may lower his dignity; but is he necessarily "degraded" or "debased" thereby? Clearly the mere fact of an assault, to which the victim is subjected unwillingly, cannot in and of itself suffice.

[5] / [5a] Clearly the Court could not have meant to imply that the punishment would have been in order if not permitted by law! But it probably did mean to imply that, whereas it thought all judicial corporal punishments were degrading, there might be some non-judicial ones (e.g. parent to child) that were not.

i.e. that the punishment was degrading because "institutionalised", or more degrading on that account that if it had not been. [5a] To be "institutionalised" is, in an ordered society, inseparable from any punishment for crime, since non-institutionalised punishment, except such as the law tolerates, must be illegal. Therefore I do not follow (and it is not explained) why institutionalised violence must necessarily be degrading, if non-institutionalised is not, or be more degrading than the latter. Indeed, it is not at all clear what form of non-institutionalised violence the Court had in mind which, by comparison, would not be regarded as degrading to the recipient. Possibly it was desired to imply (though this is not stated) that, for instance, a beating administered by a parent to a child would not degrade the latter, - whereas a "judicial" one would. I do not believe in these subtleties. In my view neither punishment (so long as administered in private) can be considered as inherently degrading where a juvenile is concerned, unless other factors over and above the beating as such are involved. The State is, in a certain sense, in loco parentis in such a situation.

(ii) Next (third section of paragraph 33), the alleged effect of the institutionalisation is said to be "compounded" by "the whole aura of official procedure attending the punishment" - (but how could the procedure not be official if there was institutionalisation? - the one is, or entails, the other) - and also compounded "by the fact that those inflicting [the punishment] were total strangers to the offender". As to this last objection, leaving aside the question whether, in the restricted community of Castletown, Isle of Man, the police officers concerned were "total strangers" to the boy, I for my part fail to see how it can be any more degrading to be beaten by strangers than non-strangers. Many would, I believe, think it less so.[6]

(iii) Then - a further "other" circumstance - it is stated at the end of the second section of paragraph 33, as something not to be "excluded", that "the punishment may have had adverse psychological effects". This seems to be pure surmise, as I have not been able to discover any evidence of it whatever. But in any case it would be totally irrelevant to the question of the alleged degrading nature of the punishment. It is a point that could go only to the question of inhumanity. If psychological effects could be established, and if these were appreciable and more than merely temporary, there might be a case for calling the punishment "inhuman", but none of this would have the slightest bearing on the question of degradation or debasement.

(iv) Exactly the same considerations apply (last section of paragraph 33) to the circumstance that there was rather a long period of delay in carrying out the punishment, after the original passing of sentence. Most of this delay

[6] Here again, the contrast the Court is perhaps seeking to make (though it is not stated) is between a beating that takes place within the family and one that is administered outside it. This is purely speculative. Many boys would mind the one as much as, or more than, the other.

was due to the fact that there was an appeal against the sentence which was not finally heard for some five weeks. However, the Judgment says that

> "Accordingly, in addition to the physical pain he experienced, Mr. Tyrer was subjected to the mental anguish of anticipating the violence he was to have inflicted on him."

During the period when the appeal was still outstanding, therefore, any mental anguish caused by the delay resulted from Mr. Tyrer's own act, and probably would have been more than compensated for by the hope that the appeal would succeed. Hence, this pronouncement on the part of the Court could in any case only apply in respect of the period of a few hours that elapsed between the dismissal of the appeal in the morning, and the carrying-out of the sentence the same afternoon - a loss of time due exclusively to delays in securing the presence of a doctor, - a requirement entirely in the boy's own interests. But be these matters as they may, the whole question of delay, whatever the cause, is one that could go only to the issue of inhumanity. To have to undergo a prolonged wait for a sentence of this kind to be carried out may well cause mental anguish and, if this was deliberately caused - (but evidently in the present case it was not) - might constitute inhuman treatment, - but it clearly has no bearing whatever on the question of the degrading character or otherwise of the punishment itself.

(v) Finally, in respect of "other" circumstances, the Judgment (paragraph 35) adverts to the fact that the punishment was administered on the bare posterior instead of over the boy's ordinary clothing. That this was permitted by Isle of Man law in the case of a juvenile of his age does not of course alter its relevance to the question of whether the punishment, as actually carried out, was degrading or not. However, what the Judgment states about it is

> "The indignity of having the punishment administered over the bare posterior aggravated to some extent [its] degrading character ... but it was not the only or determining factor."

Clearly therefore the Court regarded this circumstance only as an aggravating one, and this only to "some extent", and not as determining. It follows that the Court would have found the punishment to be degrading even if this particular element had been otherwise.

10. This brings me back to the conclusion I had suggested in paragraph 8 above - and which constitutes one of the basic causes of my dissent over the Judgment - namely that it is the fact of corporal punishment as such, irrespective of the circumstances, which, in the Court's view, is degrading, - so that no circumstances could make it otherwise. Those cited in the Judgment turn out, when analysed, to fall into one of three categories: either (institutionalisation, presence of strangers, etc.) their existence causes no more degradation, if any, than would result from their absence; or else, though possibly relevant to the question of inhuman treatment, they have no

bearing on that of degradation; or finally, they are merely aggravating and not determinant.

11. I must now state why I cannot accept the view which I have described in the preceding paragraph above. Modern opinion has come to regard corporal punishment as an undesirable form of punishment; and this, whatever the age of the offender. But the fact that a certain form of punishment is an undesirable form of punishment does not automatically turn it into a degrading one. A punishment may well have an undesirable character without being in the least degrading - or at any rate not more so than punishment in general is. And hitherto, whatever may have been felt about corporal punishment from such standpoints as whether it really deters, whether it may not have a brutalising effect, whether it harms the psyche of those who carry it out, etc., it has not been generally regarded as degrading when applied to juveniles and young offenders, in the same way as it is considered so to be in the case of adults. In that respect, the two things have never been regarded as being quite of the same order[7], or as being on the same plane. This last is the real point, - for to put it in terms of the criterion adopted by the Court, and assuming that corporal punishment does involve some degree of degradation, it has never been seen as doing so for a juvenile to anything approaching the same manner or extent as for an adult[8]. Put in terms of the Convention and of the Court's criterion, therefore, such punishment does not, in the case of a juvenile, attain the level of degradation needed to constitute it a breach of Article 3 (art. 3), unless of course seriously aggravating circumstances are present over and above the simple fact of the corporal character of the punishment. This is why I could have understood it if the Court had regarded the infliction of the blows on the bare posterior as bringing matters up to the required level of degradation. I would not necessarily have agreed with that view, but it would have been tenable. However, the Court held that this was not a determining element: the punishment was in any event degrading. This means, in effect, that any judicial corporal punishment meted out to a juvenile is degrading and a breach of Article 3 (art. 3). It is this view (in my opinion far too dogmatic and sweeping) that I cannot agree with. That such punishments may be undesirable and ought perhaps to be abolished is, as I

[7] It is really not too much to say that throughout the ages and under all skies, corporal methods have been seen as the obvious and natural way of dealing with juvenile misbehaviour.

[8] Perhaps only a psychologist could explain this, - but it seems to be an extension of the attitude that does not consider young persons as susceptible of offence in the same manner or degree as adults, so that a measure of freedom of speech or action is felt to be permissible in the one case that would not be in the other. People would not call a grown man "Sonny" or pat him on the head as they would a child or youth, and without causing any resentment. Most people indeed would regard it as rather an absurd notion that even more serious inroads than these on "dignity" and "physical integrity" could, in the case of a juvenile, be thought of as degrading.

have said, quite another matter: they are not ipso facto degrading on that account in the case of juvenile offenders.

12. I have to admit that my own view may be coloured by the fact that I was brought up and educated under a system according to which the corporal punishment of schoolboys (sometimes at the hands of the senior ones - prefects or monitors - sometimes by masters) was regarded as the normal sanction for serious misbehaviour, and even sometimes for what was much less serious. Generally speaking, and subject to circumstances, it was often considered by the boy himself as preferable to probable alternative punishments such as being kept in on a fine summer's evening to copy out 500 lines or learn several pages of Shakespeare or Virgil by heart, or be denied leave of absence on a holiday occasion. Moreover, these beatings were carried out without any of the safeguards attendant on Mr. Tyrer's: no parents, nurses or doctors were ever present. They also not infrequently took place under conditions of far greater intrinsic humiliation than in his case. Yet I cannot remember that any boy felt degraded or debased. Such an idea would have been thought rather ridiculous. The system was the same for all until they attained a certain seniority. If a boy minded, and resolved not to repeat the offence that had resulted in a beating, this was simply because it had hurt, not because he felt degraded by it or was so regarded by his fellows: indeed, such is the natural perversity of the young of the human species that these occasions were often seen as matters of pride and congratulation, - not unlike the way in which members of the student corps in the old German universities regarded their duelling scars as honourable - (though of course that was, in other respects, quite a different case).

13. In conclusion, I must insist that I am not seeking to maintain that the state of affairs I have just described was necessarily a good one, though it had, and has, many supporters. I am not advocating corporal punishment. I am simply saying that it is not degrading for juvenile offenders - or (to such extent as it is), does not, in their case, involve the level of degradation required to constitute it a breach of Article 3 (art. 3) of the European Human Rights Convention, when inflicted under proper restrictions and safeguards in consequence of a regularly pronounced judicial sentence, traditionally sanctioned for certain offences by the law of the community to which the offender belongs, and by its public opinion. No juvenile is or need feel "degraded" under those conditions.

14. Finally, I would like to advert to the remarks I made in paragraphs 15 and 16 of my Separate Opinion in the Irish case (see paragraph 1 supra) which, mutatis mutandis, are equally applicable to the question of degrading treatment or punishment. The fact that a certain practice is felt to be distasteful, undesirable, or morally wrong and such as ought not to be allowed to continue is not a sufficient ground in itself for holding it to be contrary to Article 3 (art. 3). Still less is the fact that the Article fails to provide against types of treatment or punishment which, though they may

legitimately be disapproved of, cannot, considered objectively and in relation to all the circumstances involved, reasonably be regarded without exaggeration as amounting, in the particular case, to any of the specific forms of treatment or punishment which the Article does provide against. Any other view would mean using the Article as a vehicle of indirect penal reform, for which it was not intended.