



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

COURT (CHAMBER)

CASE OF GRANGER v. THE UNITED KINGDOM

(Application no. 11932/86)

JUDGMENT

STRASBOURG

28 March 1990

In the Granger 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 ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Sir Vincent EVANS,

Mr C. RUSSO,

Mr J. DE MEYER,

Mr S.K. MARTENS,

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

Having deliberated in private on 26 October 1989 and 19 February 1990,
Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court on 27 February 1989 by the Government of the United Kingdom of Great Britain and Northern Ireland ("the Government") and on 16 March 1989 by the European Commission of Human Rights ("the Commission"), within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11932/86) against the United Kingdom lodged with the Commission under Article 25 (art. 25) by Mr Joseph Granger, a British citizen, on 5 December 1985.

The Government's application referred to Article 48 (art. 48) and the Commission's request to Articles 44 and 48 (art. 44, art. 48) and the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the application and of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 3 (c) (art. 6-3-c) of the Convention.

* Note by the Registrar: The case is numbered 2/1989/162/218. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

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

3. The Chamber to be constituted included ex officio Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 30 March 1989 the President drew by lot, in the presence of the Registrar, the names of the other five members, namely Mr F. Matscher, Mr R. Macdonald, Mr C. Russo, Mr J. De Meyer and Mr S.K. Martens (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently, Mr L.-E. Pettiti, substitute judge, replaced Mr Macdonald, who was unable to attend (Rules 22 § 1 and 24 § 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 § 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the representative of the applicant on the need for a written procedure (Rule 37 § 1). In accordance with the order made in consequence, the registry received, on 23 June 1989, the Government's memorial.

By letter of 28 August 1989, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

5. Having consulted, through the Registrar, those who would be appearing before the Court, the President directed on 30 August 1989 that the oral proceedings should open on 23 October 1989 (Rule 38).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr M. WOOD, Legal Counsellor,

Foreign and Commonwealth Office,

Agent,

Mr A. RODGER, Q.C.,

Solicitor General for Scotland,

Mr R. REED, Advocate,

Counsel;

- for the Commission

Sir Basil HALL,

Delegate;

- for the applicant

Mr J. CARROLL,

Solicitor.

The Court heard addresses by Mr Rodger for the Government, by Sir Basil Hall for the Commission and by Mr Carroll for the applicant, as well as replies to questions put by the Court and by two of its members individually.

7. The registry received a document from the Commission on 12 October 1989 and a number of documents from the Government at the hearing. On 30 October the applicant filed supplementary particulars of the

claims under Article 50 (art. 50) of the Convention which he had lodged on 11 October; the observations of the Government and of the Commission on those claims and further comments by the applicant thereon were received at the registry on 5, 14 and 28 December, respectively.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

A. The Lafferty trial

8. A number of serious incidents between rival groups in Glasgow in the early 1980's culminated in a fire-raising attack on industrial premises, followed by a petrol-bomb attack on an apartment resulting in the death of six members of the same family.

9. Mr Granger, who is a British citizen born in 1960 and resident in Glasgow, was interviewed by the police during their investigations; on 23 and 25 May 1984, in signed statements, he gave details of how the crimes had been committed and named the persons responsible, that is Thomas Lafferty and six others. This evidence was considered by the Crown to be important and was a major basis for the decision to prosecute those persons. Steps were taken to secure the applicant's safety until the trial.

10. The trial of Thomas Lafferty and the six others on charges relating, inter alia, to the fire-raising and the murders took place before the High Court of Justiciary in Glasgow in September 1984. Mr Granger appeared as a principal witness for the Crown. However, once in the witness-box, he denied all knowledge of any matters relevant to the crimes. He also denied that he had given the above-mentioned statements, claiming instead that they had been made up by the police, who had pressurised him into signing them.

B. The applicant's trial for perjury

11. Shortly afterwards, the applicant was arrested and prosecuted on indictment in the High Court of Justiciary for perjury. He was held in custody pending and during his trial. In summary, the charges against him were that, while giving evidence at the Lafferty trial, he had untruthfully:

(a) stated that marks on a plan which he had drawn had been placed there by him on the instructions of the police rather than on his own initiative;

(b) denied making a detailed statement to the police on 23 May 1984 about the fire-raising;

(c) denied making a detailed statement to the police on 25 May 1984 about the murders;

(d) claimed to have been pressurised and assaulted by the police and forced to sign statements previously prepared by them;

(e) pretended that he had told his solicitor that he had been assaulted by police officers and forced to sign a statement against his will.

12. The applicant received legal aid for the preparation of his defence by his solicitor and for representation at his trial by both senior and junior counsel.

The Crown was represented by the Solicitor General for Scotland (see paragraph 29 below), since the gravity of the charges was considered to warrant the presence of a senior prosecutor and since the most senior Advocate Depute, who had appeared for the prosecution at the Lafferty trial, was to be a witness at the applicant's trial.

After a four-week trial before the High Court of Justiciary in Glasgow in February 1985, Mr Granger was found guilty of the first, second and fourth charges against him and not guilty of the fifth; the third was found not proven. He was sentenced to five years' imprisonment.

The trial judge certified, for the purposes of determining the fees payable under the legal-aid scheme, that the case had been one of exceptional length, complexity and difficulty.

C. The applicant's appeal against conviction

13. The applicant's solicitor subsequently lodged an intimation of intention to appeal against conviction (see paragraph 27 below). The legal aid granted for the perjury trial covered this work, as well as the solicitor's advising on the prospects of an appeal, obtaining counsel's opinion on the same point, having counsel frame a note of appeal setting out the grounds of appeal (*ibid.*), lodging the note of appeal and making an application for legal aid to pay for representation at the hearing of the appeal itself.

14. Such an application was submitted on behalf of Mr Granger, who had insufficient means to pay for legal assistance, to the Supreme Court Legal Aid Committee of the Law Society of Scotland (see paragraph 30 below) on 6 June 1985. It was accompanied by a memorandum, a copy note of appeal (with a supplementary statement of the grounds) and the judge's summing-up to the jury at the applicant's trial; later a copy of the indictment and a note of previous convictions were also lodged.

15. The Committee considered the material before it to be insufficient and asked the applicant's solicitor to furnish counsel's opinion on the prospects of the appeal. This he did on 4 July 1985.

The solicitor had, in fact, already obtained such an opinion, on 14 May 1985, from the senior and junior counsel who had represented Mr Granger at his trial; the senior counsel, in particular, had considerable experience in presenting appeals before the High Court of Justiciary. The authors of the opinion concluded that they could not advise that the appeal should proceed: in their view, neither of the two possible stateable grounds of appeal was of sufficient substance as to have reasonable prospects of success and, in any event, there was no real prospect of satisfying the court that there had been a miscarriage of justice (see paragraph 26 below).

The solicitor also provided the Committee with a copy of his letter of 23 May 1985 to his Edinburgh agents, indicating that he disagreed with counsel's opinion. Although he had obtained on 5 February 1985, for the purposes of the applicant's trial, a psychiatric report which stated that the applicant was of modest intelligence but with a poor command of English and poor comprehension of written material, he did not communicate this to the Committee. Neither did he refer, in any material he placed before it, to any intellectual or linguistic limitations of his client.

16. By decision of 11 July 1985, which was stated to be final, the Committee refused the application, since it was not satisfied that Mr Granger had substantial grounds for his appeal (see paragraph 31 below).

17. The applicant nevertheless continued to receive advice and assistance from his solicitor and decided to proceed with the appeal. The grounds were the same as those considered by counsel in the opinion of May 1985 (see paragraph 15 above). The applicant maintained that there had been a miscarriage of justice (see paragraph 26 below), in that (in summary):

(a) during the cross-examination of a police officer, the trial judge had intervened with the comment - alleged to be tantamount to a premature direction in law to the jury and incorrect - that the line being followed by the defence was incompetent and irrelevant;

(b) the judge had erred in admitting in evidence a statement made by the applicant on 23 May 1984, notwithstanding a defence objection that it was inadmissible as being in the nature of a precognition, that is a statement made by a potential witness at an advanced stage of an investigation outlining the evidence he is likely to give at a forthcoming trial;

(c) the judge had erred in repelling a further objection to the admissibility of the same statement, namely that it was evidence of crimes not charged against the applicant and would lead to prejudice;

(d) the judge had erred in directing the jury that it would not be unfair for a police officer - if he genuinely believed that his superiors intended to use the applicant only as a witness - to have told the applicant, prior to obtaining the aforesaid statement and certain sketch plans, that he would not be charged with any offence;

(e) the judge had erred in rejecting a defence submission that the evidence given by the applicant at the Lafferty trial had not been "material" and accordingly could not form the basis of a charge of perjury.

18. The hearing of the appeal opened before the High Court of Justiciary, sitting in Edinburgh as an appellate court of three judges, on 27 September 1985. The Crown was again represented by the Solicitor General for Scotland, accompanied by junior counsel and a member of the staff of the Crown Office (see paragraph 29 below).

Since the refusal of legal aid precluded the instruction of counsel and since solicitors do not have rights of audience in the High Court of Justiciary, Mr Granger presented his appeal himself. He read out a statement, prepared by his solicitor, which elaborated on the written grounds of appeal. The Solicitor General replied, addressing the court for about ninety minutes.

19. The principal point discussed at the hearing was whether the court could determine ground (b) of the appeal (see paragraph 17 above) without considering a transcript of the relevant parts of the evidence given at the applicant's trial. Notwithstanding the Solicitor General's arguments to the contrary, the court decided that it could not. It therefore ordered that a transcript be prepared and adjourned the hearing to 6 March 1986. The applicant's solicitor subsequently assisted in the preparation of the transcript.

Following this adjournment, Mr Granger did not renew, or request reconsideration of, his legal-aid application, nor did he advise the Legal Aid Committee of the court's order.

20. At the resumed hearing the applicant had again been provided by his solicitor with a written speech, which dealt with all the grounds of appeal. Although the court pointed out that it wished to hear submissions on ground (b) only, it allowed the applicant, who was unable to comprehend the legal niceties, to read out the speech in full.

21. The High Court of Justiciary unanimously refused the appeal on all grounds. In his written judgment the Lord Justice-Clerk, who presided, gave full consideration to each of the grounds, but was satisfied that none of them had substance and that there had been no miscarriage of justice (see paragraph 26 below). He described the appellant's submissions as "well prepared and clearly expressed".

22. Mr Granger was released from prison on 16 July 1988 after serving two-thirds of his sentence, the remainder having been remitted.

D. The Lord Advocate's reference

23. On 26 September 1985 - the day before the first hearing in the applicant's appeal - the Lord Advocate referred, under section 263A of the Criminal Procedure (Scotland) Act 1975 (see paragraphs 32-33 below), for

the opinion of the High Court of Justiciary two questions of law that arose from the judge's directions to the jury, at the perjury trial, concerning the charge which had been found not proven (see paragraph 12 above). The questions were:

(a) whether, in a trial for perjury where the accused was not an accused in the previous trial, it is of any relevance that a statement made by him and falsely denied under oath was allegedly obtained by means described as unfair; and

(b) whether, in a trial for perjury, the "materiality" of the false evidence to the issue in the earlier trial is (i) a prerequisite to conviction and in any event (ii) a matter of fact to be left to the jury.

24. On 13 June 1986 the High Court heard submissions on the reference. Mr Granger exercised his statutory right to be represented at the hearing, the fees of senior counsel instructed for this purpose being paid by the Lord Advocate (see paragraph 32 below). In its opinion of 26 June the court held that the trial judge's directions - which had been favourable to the applicant - had not been an accurate statement of the law. This opinion did not affect the applicant's acquittal (see paragraph 33 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Appeals against conviction and/or sentence by persons convicted on indictment

25. Every person convicted of a criminal charge in Scotland has an automatic right of appeal - there being no requirement of prior leave - against conviction or sentence or both. In cases, such as the applicant's, tried on indictment, the right is conferred by section 228 of the Criminal Procedure (Scotland) Act 1975, as amended by the Criminal Justice (Scotland) Act 1980 ("the 1975 Act").

26. In an appeal against conviction, the appellant may bring under review any alleged miscarriage of justice in the earlier proceedings. "Miscarriage of justice" is not defined by statute, but covers such matters as misdirections by the trial judge to the jury or wrong decisions on the admissibility of evidence, as well as breaches of natural justice.

An appellate court which holds that there has been a miscarriage of justice retains a discretion not to allow the appeal if it determines that the miscarriage is not such as to warrant the quashing of the conviction (section 254 of the 1975 Act).

27. Anyone wishing to appeal against conviction must lodge an intimation of his intention to do so within two weeks of the final determination of the proceedings against him (section 231 of the 1975 Act). He then has six weeks in which he may file a note of appeal containing a

full statement of the grounds; he may not, in general, found any aspect of his appeal on a ground not set out therein (section 233 of the 1975 Act).

28. At the hearing submissions will first be made by or on behalf of the appellant; whilst unusual, this may be done in writing (section 234 of the 1975 Act). Counsel for the Crown will then address the court.

Counsel for the Crown has a duty to act with complete fairness and to assist the court by providing impartial information and, if need be, argument so that the appellant's case can be evaluated in the best possible light. This is especially important where the appellant is not represented by counsel. Such cases are common, firstly because the unrestricted right of appeal (see paragraph 25 above) results in the filing of many appeals which are without merit and, hence, do not qualify for legal aid (see paragraph 31 below). Secondly, and irrespective of the availability of legal aid, counsel must, according to the Guide to the Professional Conduct of Advocates, refuse to act further in a criminal appeal if he has formed the opinion that there are no grounds which he is prepared to state to the court.

Whether the appellant is represented or not, the court will undertake a thorough examination of the appeal and will be scrupulous in examining the points which might be favourable to him.

29. At the hearing of appeals in the High Court of Justiciary the Crown will always be represented, either by the Lord Advocate or the Solicitor General (who are the Law Officers of the Crown) or by one of the Advocate Deputes. In an appeal against conviction following a long trial, the Crown will usually be represented by the counsel who appeared for it below, on account of his familiarity with the case.

As Ministers of the Crown, the Law Officers are liable to be called away from court at short notice to carry out other duties. They will therefore normally be accompanied by another counsel, but he will play no active part unless the Law Officer has to leave. Counsel for the Crown will also invariably be accompanied by the member of the Crown Office staff who prepared the day's papers for the court; his function is entirely clerical and administrative and he will not participate in the discussion of the appeal.

B. Legal aid for criminal appeals

30. Legal aid granted for a trial on indictment covers certain work done in contemplation of an appeal, as listed in paragraph 13 above. If it is thereafter intended to proceed with the appeal, legal aid may be sought for that purpose. Its availability was, at the relevant time, governed by the Legal Aid (Scotland) Act 1967, as amended ("the 1967 Act"). Applications therefor were then determined by the Supreme Court Legal Aid Committee of the Law Society of Scotland, whose members were independent advocates and solicitors with substantial current experience of court practice.

The whole system for the administration of legal aid was reformed by the Legal Aid (Scotland) Act 1986, which repealed and replaced the 1967 Act with effect from 1 April 1987. In particular, the former functions of the Legal Aid Committee were transferred to another body.

31. Section 1(7) of the 1967 Act provided:

"In criminal proceedings, a person shall not be given legal aid in connection with -

(a) ...

(b) proceedings by way of appeal against conviction or sentence ... unless it appears that he has substantial grounds for taking those proceedings, and that it is reasonable that he should receive legal aid in the particular circumstances of the case."

It would have been extremely unusual for the Committee to decide that it was not reasonable to grant legal aid to a person appearing to have substantial grounds for appealing. It normally determined applications on the basis of the documents before it, which would have included the note of appeal setting out the grounds and the judge's summing-up to the jury, and in the light of the views of the counsel or solicitor who acted for the appellant at the trial.

According to Article 21 of the Legal Aid (Scotland) (Criminal Proceedings) Scheme 1975, the Committee's decision on the merits of an application for legal aid for a criminal appeal was final.

C. Lord Advocate's references

32. Under section 263A of the 1975 Act, where a person tried on indictment is acquitted on a charge, the Lord Advocate may refer a point of law which has arisen in relation to that charge to the High Court for an opinion. The person concerned may elect to appear personally or to be represented by counsel at the hearing. If he does not desire to be so represented, the court will appoint counsel to act as *amicus curiae*, in order to ensure that the issues are fully argued. In either case, counsel's fees will be paid by the Lord Advocate.

33. This procedure was introduced into Scots law because previously the prosecution had, in all cases tried on indictment, no right of appeal. There was accordingly a risk that an erroneous decision by the trial judge might be treated as authoritative in later cases.

The sole purpose of a reference by the Lord Advocate is to clarify the law for the future, section 263A expressly providing that the opinion of the High Court "shall not affect the acquittal" of the person concerned. Fresh proceedings on the charge in question cannot be instituted against him, even if the opinion is favourable to the prosecution.

PROCEEDINGS BEFORE THE COMMISSION

34. In his application (no. 11932/86) lodged with the Commission on 5 December 1985, Mr Granger complained notably of the fact that he was refused free legal aid for his appeal. He invoked Articles 5, 8 and 13 (art. 5, art. 8, art. 13) and, in particular, 6 §§ 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention.

35. The Commission declared the application admissible on 9 May 1988.

In its report of 12 December 1988 (drawn up in accordance with Article 31) (art. 31), the Commission expressed the opinion:

(a) unanimously, that there had been a violation of Article 6 § 3 (c) (art. 6-3-c);

(b) by eleven votes to one, that no separate issue arose under Article 6 § 1 (art. 6-1);

(c) unanimously, that there had been no violation of Article 5 (art. 5) or Article 8 (art. 8);

(d) unanimously, that there had been no violation of Article 13 (art. 13) in respect of the applicant's complaints under Articles 5 and 8 (art. 5, art. 8) and that no separate issue arose under Article 13 (art. 13) in respect of the applicant's complaints under Article 6 (art. 6).

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

FINAL SUBMISSIONS MADE TO THE COURT

36. At the hearing on 23 October 1989, the applicant moved the Court "to approve [his] complaints and find in his favour, award just satisfaction in respect of the complaints and award expenses against the Government". He stated, however, that he felt "bound to accept the decision of the Commission" on Articles 5, 8 and 13 (art. 5, art. 8, art. 13).

The Government, for their part, requested the Court to declare:

"(a) that the applicant has not exhausted domestic remedies in respect of his complaint under Article 6 (art. 6) of the Convention or, in the alternative, that there has been no violation of Article 6 (art. 6); and

(b) ... that there has been no violation of Articles 5, 8 or 13 (art. 5, art. 8, art. 13) of the Convention."

* Note by the Registrar: For practical reasons this annex will appear only with the printed version of the judgment (volume 174 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

37. In their memorial the Government pleaded that Mr Granger had not exhausted all domestic remedies, by reason of (a) his failure to re-apply to the Legal Aid Committee, together with (b) "his failure to raise [the points which he now seeks to adduce before the Convention organs] in his first application to the Committee".

The applicant and the Commission disagreed.

38. As regards ground (b) in support of their plea of non-exhaustion, the Government explained at the hearing before the Court that the "points" referred to were the psychiatric report on the applicant and his limited intellectual and linguistic abilities (see paragraph 15 above). They acknowledged, however, that before the Commission they had not expressly linked these points to the issue of non-exhaustion.

In the Court's view, there was nothing to prevent the Government from doing so. Consequently they are, according to the established case-law, estopped from pleading non-exhaustion on this ground (see, for example, the Artico judgment of 13 May 1980, Series A no. 37, p. 13, § 27, and the Bricmont judgment of 7 July 1989, Series A no. 158, p. 27, § 73).

39. As regards ground (a), which had been raised before the Commission, the Government maintained that, after the High Court of Justiciary had called for a transcript of the evidence and adjourned its hearing of Mr Granger's appeal on 27 September 1985 (see paragraph 19 above), it would have been open to him to renew his legal-aid application or request the Legal Aid Committee to reconsider it.

In this connection, the Government stated that, although the Committee was not required by law to reconsider applications it had refused, its practice - which was well established and widely known at the time - was to do so where a material change of circumstances had occurred or where relevant new information was placed before it. As evidence of this they referred to the cases of *Larkin v. Her Majesty's Advocate* and *Williamson v. Her Majesty's Advocate* (1988 Scottish Criminal Case Reports 30 and 56), in which legal aid had been granted, after the appeal court had called for a transcript of the evidence given at first instance, to appellants who initially had not been legally aided.

40. The Court observes that the two cases cited date from 1988, that is some years after the applicant's appeal, by which time the previous system for the administration of legal aid had been reformed (see paragraphs 14 and 30 above). The Government have adduced no evidence of the practice of the Legal Aid Committee itself as regards the reconsideration of applications, the existence whereof was, in fact, questioned by Mr Granger. The

Government have, therefore, not furnished the necessary proof of the availability of a remedy that the applicant should have exhausted (see, as the most recent authority, the Brozicek judgment of 19 December 1989, Series A no. 167, p. 16, § 32).

41. In sum, the preliminary objection is subject to estoppel as to part and without foundation as to the remainder.

II. ALLEGED VIOLATION OF ARTICLE 6 (art. 6)

42. Mr Granger complained of the refusal to grant him legal aid for his appeal and of the inequality of arms he attributed thereto. He alleged violations of paragraphs 1 and 3 (c) of Article 6 (art. 6-1, art. 6-3-c) of the Convention, which read:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

..."

The Government contested these allegations. The Commission expressed the opinion that there had been a violation of paragraph 3 (c) (art. 6-3-c) and that no separate issue arose under paragraph 1 (art. 6-1).

43. Since the guarantees in paragraph 3 of Article 6 (art. 6-3) are specific aspects of the right to a fair trial in criminal proceedings stated in paragraph 1 (art. 6-1) (see, for example, the Kostovski judgment of 20 November 1989, Series A no. 166, p. 19, § 39), the Court considers it appropriate to examine the applicant's complaints from the angle of paragraphs 3 (c) and 1 (art. 6-3-c, art. 6-1) taken together.

44. As regards paragraph 3 (c) (art. 6-3-c), it was common ground that Mr Granger did not have "sufficient means to pay for legal assistance"; the sole issue under this paragraph is therefore whether "the interests of justice" required that he be given such assistance free.

In this connection, the Court recalls that the manner in which paragraph 1, as well as paragraph 3 (c), of Article 6 (art. 6-1, art. 6-3-c) is to be applied in relation to appellate or cassation courts depends upon the special features of the proceedings involved; account must be taken of the entirety of the proceedings conducted in the domestic legal order and of the role of the

appellate or cassation court therein (see, *inter alia*, the Monnell and Morris judgment of 2 March 1987, Series A no. 115, p. 22, § 56).

45. The Government maintained that the Commission's conclusion was not justified by the various factors on which it had relied. In their view, the interests of justice, the evaluation whereof lay in the first place with the domestic authorities, did not require a grant of legal aid for the appeal, which they described as being "wholly without substance" and having "no reasonable prospects of success". They pointed out that Mr Granger had had full legal aid for his trial, extending to the obtaining of counsel's opinion on the prospects of an appeal, which opinion had been negative (see paragraphs 13 and 15 above); that the Legal Aid Committee, an independent and expert body, had not been satisfied that there were substantial grounds for the appeal (see paragraph 16 above); that the applicant had been able to present argument at the appeal hearings (see paragraphs 18 and 20 above); and that the case had to be seen in the context of the Scottish system in which an active role was played by the appeal court and an impartial role was expected of the Crown and where the automatic right of appeal resulted in the filing of many appeals which were without merit (see paragraphs 25 and 28 above).

46. The Government's description of the appeal as "wholly without substance" is more categorically negative than the opinion expressed on this subject by the applicant's counsel and the Legal Aid Committee (see paragraphs 15-16 above). However, it is not the Court's task to go further into this matter, notably by formulating its own view as to whether the Committee was correct in concluding, on 11 July 1985, that it was not satisfied that there were substantial grounds for appealing. The question whether the interests of justice required a grant of legal aid must be determined in the light of the case as a whole. In that respect not only the situation obtaining at the time the decision on the application for legal aid was handed down but also that obtaining at the time the appeal was heard are material.

47. Mr Granger had been convicted on indictment of perjury and sentenced to five years' imprisonment. There can thus be no question as to the importance of what was at stake in the appeal.

Before the High Court of Justiciary, the Solicitor General, on account of his familiarity with the case, appeared for the Crown and addressed the judges at length (see paragraphs 12, 18 and 29 above). On the other hand, the applicant, as was not contested, was not in a position fully to comprehend the pre-prepared speeches he read out (see paragraphs 18 and 20 above) or the opposing arguments submitted to the court. It is also clear that, had the occasion arisen, he would not have been able to make an effective reply to those arguments or to questions from the bench.

The foregoing factors are of particular weight in the present case in view of the complexity of one of the issues involved. Whilst the High Court of

Justiciary apparently had little trouble in disposing of four of Mr Granger's grounds of appeal, the same did not apply to the remaining one. After hearing argument, it decided that this ground - which turned on what the Solicitor General himself described at the European Court's hearing as the "difficult" distinction between "precognitions" and other statements (see paragraph 17(b) above) - deserved more detailed consideration. It adjourned its hearing and called for a transcript of the evidence given at the applicant's trial, so as to be able to examine the matter more thoroughly (see paragraph 19 above). It thus became clear that this ground of appeal raised an issue of complexity and importance.

In this situation some means should have been available to the competent authorities, including the High Court of Justiciary in exercise of its overall responsibility for ensuring the fair conduct of the appeal proceedings, to have the refusal of legal aid reconsidered. According to the scheme in operation at the relevant time, however, the Legal Aid Committee's decision of 11 July 1985 was stated to be final (see paragraphs 16 and 31 above). The Government, it is true, maintained that as a matter of practice the decision could have been reviewed after the High Court had called for a transcript of the evidence and adjourned its hearing of the appeal (see paragraphs 39-40 above). In fact no such review took place. It would appear to the Court that in all the circumstances of the case it would have been in the interests of justice for free legal assistance to be given to the applicant at least at that stage for the ensuing proceedings. Such a course - which would have been in line with what occurred in the later cases of Larkin and Williamson (see paragraph 39 above) - would in the first place have served the interests of justice and fairness by enabling the applicant to make an effective contribution to the proceedings (see, *mutatis mutandis*, the Pakelli judgment of 25 April 1983, Series A no. 64, p. 18, § 38). Furthermore, the High Court of Justiciary would then have had the benefit of hearing - just as it does before giving an opinion on a reference by the Lord Advocate (see paragraph 32 above) - expert legal argument from both sides on a complex issue.

48. The Court thus concludes that there has been a violation of paragraph 3 (c), taken together with paragraph 1, of Article 6 (art. 6-3-c, art. 6-1).

III. ALLEGED VIOLATIONS OF ARTICLES 5, 8 AND 13 (art. 5, art. 8, art. 13)

49. Before the Commission, Mr Granger also alleged violations of Articles 5, 8 and 13 (art. 5, art. 8, art. 13) of the Convention (see paragraph 34 above). However, these claims were not pursued before the Court (see paragraph 36 above) and it sees no need to examine them of its own motion.

IV. APPLICATION OF ARTICLE 50 (art. 50)

50. 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 ... 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."

Mr Granger sought under this provision compensation for damage, together with reimbursement of his costs and expenses referable to the proceedings before the Convention institutions.

A. Damage

51. Whilst accepting that it was impossible to be certain as to the outcome of the appeal had legal aid been granted, Mr Granger maintained that it could not be said that there was no objective prospect of success. He claimed that he was entitled to compensation in the region of £10,000 for damage suffered as a result of his imprisonment and the stress of the whole circumstances of the case, in the shape of denial of the opportunity of securing remunerative employment and disruption of his private life.

52. The Court cannot speculate as to what the outcome of Mr Granger's appeal would have been if he had been legally aided. As the Government pointed out, even in that event the grounds of appeal which would have been argued would have been the same (see paragraph 27 above); it cannot therefore be assumed that the result would have been more favourable to the applicant. The Court thus agrees with the Government that no causal link has been established between the violation of Article 6 (art. 6) and the alleged pecuniary damage.

As regards non-pecuniary damage, it is true, as the Government emphasised, that although Mr Granger was not legally aided, he was assisted by his solicitor throughout the appeal proceedings (see paragraphs 17-18 and 20 above). All the same, he must have been left with a certain sensation of isolation and confusion, especially on learning that he would have to face a second hearing devoted to a complex issue which he could not fully comprehend. The Court considers that he should be awarded under this head the sum of £1,000.

B. Costs and expenses

53. Mr Granger claimed no compensation in respect of domestic legal costs; on this point his solicitor explained to the Court that he did not feel

that he would have expected his client to pay for work done in connection with his appeal.

54. For lawyer's fees and disbursements referable to the proceedings in Strasbourg the applicant sought reimbursement of the sum of £11,290.73, inclusive of value added tax; this figure did not include travel and subsistence expenses paid by the Council of Europe by way of legal aid.

The Government did not contest that the applicant had incurred liability to pay sums additional to those covered by the aforesaid legal aid and they indicated their willingness to reimburse costs as assessed by the Court on the usual basis. They did, however, make a series of observations on the claim and submitted that an appropriate assessment would be £4,092.13, inclusive of value added tax; this figure should be further reduced if and to the extent that no violation were found in respect of certain of the applicant's allegations.

55. The Court has examined the claim in the light of the criteria emerging from its case-law and of the observations presented by the Government and the Delegate of the Commission. In doing so, it has noted the following points.

(a) The applicant's solicitor compiled his account by reference to the Scottish scales for conveyancing and general business. Like the Delegate, the Court is not persuaded by the Government's submission that the appropriate basis of calculation would be the criminal legal aid fees payable in Scotland. In any event, it is not bound in this context by domestic scales or standards (see, for example, the *Eckle* judgment of 21 June 1983, Series A no. 65, p. 15, § 35).

(b) The Court shares the Government's doubts as to the quantum and relevance of certain items in the solicitor's account.

(c) It is true that the complaints of violation of Articles 5, 8 and 13 (art. 5, art. 8, art. 13) of the Convention, contained in the application to the Commission, have not been upheld. However, the applicant's allegations in this respect were not pursued before the Court (see paragraph 49 above); moreover, during the proceedings before the Commission, they were, according to the Delegate, the subject neither of written observations nor of oral argument at the hearing. The bulk of the work done by the applicant's solicitor thus related to Article 6 §§ 1 and 3 (c) (art. 6-1, art. 6-3-c), so that it would not, in the Court's view, be appropriate to make a significant reduction in respect of the unsuccessful complaints.

56. Taking into account the above factors and also the legal aid payments made by the Council of Europe in respect of his solicitor's fees and making an assessment on an equitable basis, the Court considers that Mr Granger is entitled to be reimbursed, for legal fees and expenses, the sum of £7,000, inclusive of value added tax.

FOR THESE REASONS, THE COURT

1. Dismisses unanimously the Government's objection of non-exhaustion of domestic remedies;
2. Holds unanimously that there has been a violation of paragraph 3 (c), taken together with paragraph 1, of Article 6 (art. 6-3-c, art. 6-1) of the Convention;
3. Holds unanimously that it is not necessary to examine the case under Articles 5, 8 and 13 (art. 5, art. 8, art. 13);
4. Holds by four votes to three that the United Kingdom is to pay to the applicant £1,000 (one thousand pounds) for non-pecuniary damage;
5. Holds unanimously that the United Kingdom is to pay to the applicant £7,000 (seven thousands pounds), inclusive of value added tax, for legal costs and expenses;
6. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 March 1990.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar