

AS TO THE ADMISSIBILITY OF

Application No. 26249/95
by John William DICK
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 28 February 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 5 July 1994 by John William DICK against the United Kingdom and registered on 19 January 1995 under file No. 26249/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1938, is a Canadian citizen, with a permanent address in Jersey, the Channel Islands, and currently lives in Germany. He is represented by Mr. George Devlin, who describes himself as a Human Rights Consultant and is resident in Jersey. The facts of the case may be summarised as follows:

a) Proceedings in California and Colorado, United States of America.

In February 1982, the applicant and X, were married and in April 1987 they separated. X commenced divorce proceedings in California ("the California proceedings") and in Colorado ("the Colorado proceedings"). During the course of the California proceedings, X applied for temporary support or maintenance from the applicant. On 19 December 1990, a temporary support order was granted ("the 1990 Order") under which the applicant was required to pay X a substantial sum. The court's decision was to some extent dependent on evidence given by Y, a friend of X, that he did not intend to give her any further financial assistance.

The applicant's appeal against the 1990 Order to the Court of Appeal of the State of California and his petition for review to the Supreme Court of the State of California were refused on 26 April 1993 and 26 August 1993 respectively.

b) The Jersey proceedings

On 14 September 1993 X applied, in accordance with the Loi sur les saisies en vertu d'ordres provisoires (1862), to the Royal Court of the Island of Jersey for an Order of Justice and a "saisie" of the applicant (arrest and incarceration order), claiming that the accumulated debt owed to her by the applicant under the 1990 Order was \$3,222,782.06.

On 15 September 1993, the Royal Court of the Island of Jersey (Samedi Division) granted X, by an Order of Justice, a "saisie" of the applicant ("the saisie") that provided that the applicant should be arrested and incarcerated at the Debtor's prison at La Moye until the earliest of the following:

- \$2,000,000 caution was paid; or
- The Plaintiff's claim together with the Plaintiff's costs were paid in full; or
- Until further order of the Court.

It was further ordered that the applicant pay the costs of the application and that he be convened before the court so that the court could order payment of the debt.

The applicant was outside the jurisdiction at the time that the Order of Justice was made, and was not given notice of X's application for the order.

The applicant, who had lived in Germany for several years, arrived in Jersey for a visit on 21 November 1993. On 29 November 1993 he was arrested and served with a summons requiring him to appear before the Royal Court of Jersey on 10 December 1993 in order to witness confirmation of the Order of Justice. He was taken to H.M. Prison La Moye immediately, his request to collect his insulin from his home in Jersey being refused despite his need to inject himself seven times a day. He was brought before the court on 3 December 1993, when the court ordered his continued detention pending payment of the debt owed to X or of a security of \$2,000,000 or further order of the court.

On 10 December 1993, the applicant was again brought before the court, which ordered that the applicant should remain in prison until he had paid X the sum of \$3,222,782 plus costs or until he had completed one year and one day in prison, whichever was the earlier.

The applicant's application for release (by summons filed on 14 December 1993) was heard on 21 December 1993. The court varied the terms of the saisie on medical grounds, ordering that the applicant should be released from the Debtor's prison on condition that he:

- (a) first handed over his passports to the Viscount;
- (b) resided at his home and did not leave the island without permission of the Court;
- (c) submitted to a medical examination by Doctor William Richard Ginks (and that if he wished to receive treatment outside the jurisdiction, he should first apply to the Court for permission to do so).

X appealed against the Order and applied for the applicant to be re-arrested and incarcerated in Debtor's prison under the terms of the Order of Justice of 15 September 1993, claiming that the court had no power to order the applicant's release.

By summons filed on 20 December 1993, to be heard on

26 January 1994, X applied for final judgment against the applicant for the amount claimed in the Order of Justice plus costs ("application for summary judgment").

During the hearing of the application for summary judgment, evidence of a deposition sworn on 20 December 1992 in the course of the Colorado proceedings (which followed the California proceedings), was adduced by the applicant on affidavit to show that the 1990 Order had been obtained on the basis of fraud, in particular to show that Y had not ceased to give X financial assistance nor had he intended to do so, as had been claimed in the course of the California proceedings. The applicant submitted that the 1990 Order would not therefore be enforceable in either California or Jersey. In light of the above, on 11 February 1994 the court dismissed X's application for summary judgment and the granted the applicant unconditional leave to defend the action. The applicant remained subject to the *saisie*, as varied on 21 December 1993.

By a summons filed on 22 March 1994, the applicant applied for the conditions upon which he was released from custody on 21 December 1993, to be amended or lifted. On 29 April 1994, the *saisie* was lifted, on the basis that it was arguable that the 1990 Order was not enforceable in that it had been obtained on the basis of fraud. The applicant's passport was returned and he was able to rejoin his companion in Germany.

COMPLAINTS

The applicant alleges violations of Article 5 of the Convention. In particular, he claims that his detention from 29 November 1993 to 21 December 1993 did not fall within any of the heads of Article 5 para. 1 for the following reasons:

- he considers that Article 5 para. 1 (b), which imposes requirements beyond those of domestic law as it requires detention not to be arbitrary, cannot be applicable as there was no "specific and concrete obligation" in the case, that is, the Jersey courts failed to satisfy themselves that the California Order was made by a competent foreign jurisdiction, that it was a final and conclusive judgment, and that it was not obtained by fraud. He submits that the California Order was obtained by fraud;
- in connection with Article 5 para. 1 (c), the applicant considers that the reason for his detention was to punish him, and he points to the possibility of detention for up to one year and a day. He does not accept that the detention was "lawful" within the meaning of Article 5 para. 1 (c).

Given that he sees the proceedings as criminal in nature and the detention as punishment, the applicant alleges a violation of Article 5 para. 3 of the Convention because he was not brought before a judge "promptly" - the summons he initially received had a return date of 10 December 1993, and the applicant was in fact brought before the court on 3 December 1993.

Under Article 5 para. 4 of the Convention, the applicant complains both of the time taken for the proceedings whilst he was in detention, that is until his release on 21 December 1993, and also of the subsequent period when he was confined to the island - confinement which, he says, was tantamount to detention. He refers to the case of *Guzzardi* in this respect (Eur. Court H.R., *Guzzardi* judgment of 6 November 1980, Series A no. 39).

Finally, the applicant considers that the *ex parte* nature of the order of 15 September 1993 violated Article 6 paras. 1, 2 and 3 (c) and (d), and also Article 8 of the Convention.

THE LAW

1. The applicant considers that his confinement to the island of Jersey from 21 December 1993, when he was released from prison, to 29 April 1994, when the *saisie* was lifted, constituted detention within the meaning of Article 5 (Art. 5) of the Convention, and that that continued detention did not comply with the provisions of Article 5 (Art. 5) of the Convention.

Article 5 (Art. 5) of the Convention guarantees the right of an individual not to be deprived of his liberty except in special circumstances.

The Commission recalls that the "right to liberty" guaranteed by Article 5 (Art. 5) envisages the physical liberty of an individual; its aim being to ensure that no one should be deprived of this liberty in an arbitrary fashion. It is not concerned with mere restrictions on liberty of movement, such restriction being governed by Article 2 of Protocol No. 4 (P4-2) which has not been ratified by the United Kingdom. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5 (Art. 5), the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (Eur. Court H.R., *Guzzardi* judgment of 6 November 1980, p. 33, para. 92).

The Commission recalls that in the case of *Guzzardi*, the European Court of Human Rights found that the applicant's compulsory residence on an island was a deprivation of liberty within the meaning of Article 5 para. 1 (Art. 5-1) of the Convention as in certain respects it resembled "detention in an 'open prison' or committal to a disciplinary unit" (Eur. Court H.R., *Guzzardi* judgment of 6 November 1980, Series A No. 39, p. 35, para. 95). The measures applied to the applicant in the *Raimondo* case were not a "deprivation of liberty" within the meaning of Article 5 para. 1 (Art. 5-1) of the Convention (Eur. Court H.R., *Raimondo* judgment of 22 February 1994, Series A no. 281, p. 19, para. 39). The Commission further recalls that in *F. v. Switzerland*, the confinement of an individual to a small part of a territory, in which he was allowed to move freely without being subject to surveillance was not held to be a "deprivation of liberty" within Article 5 (Art. 5) (No. 16360/90, Dec. 2.3.94, D.R. 76, p. 13).

The applicant had a house in Jersey, and indeed gives Jersey as his permanent place of residence. There is therefore no question of his being banished to unfamiliar surroundings or having to lead a life which was uncomfortable in any way. Moreover, no restrictions as to when and where he could go on the island were imposed, nor was he completely prohibited from leaving the island, but could ask permission of the court to leave. There was no restriction on the applicant's pursuing business interests. The applicant's confinement to Jersey once he was released on 21 December 1993, which lasted until the "*saisie*" was lifted on 29 April 1994, was therefore quite different from the compulsory residence in the *Guzzardi* case and similar to that of *F.* in *F. v. Switzerland*, referred to above.

In these circumstances, the Commission finds that the conditions imposed on the applicant for his release were conditions comparable to bail conditions imposed pursuant to Article 5 para. 3 (Art. 5-3) of the Convention, and did not constitute detention in the present case.

It follows that the applicant was not deprived of his liberty subsequent to 21 December 1993, so that Article 5 (Art. 5) has no application from that date.

This complaint is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant alleges a violation of Article 5 paras. 1 and 4 (Art. 5-1, 5-4) of the Convention. He considers that his detention did not fall within any of the sub-paragraphs of that provision, and that the lawfulness of his detention was not determined "speedily". Article 5 (Art. 5) of the Convention provides, so far as relevant, as follows:

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

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

The applicant was detained on 29 November 1993 and released on 21 December 1993. In the absence of any proceedings in Jersey that would have enabled the applicant to determine whether (1) his arrest and detention had been lawful and (2) there had been a violation of Article 5 para. 4 (Art. 5-4), the applicant was required to submit his application to the Commission within six months of his release date, 21 December 1993 (see *X. v. Sweden*, No. 10230/82, Dec. 11.5.83, D.R. 32, p. 305). The applicant introduced his application on 5 July 1994, more than six months after his release date.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant also alleges a violation of Article 5 para. 3 (Art. 5-3) of the Convention, claiming that because the proceedings could have resulted in his detention for a year and a day they are criminal proceedings.

Article 5 para. 3 (Art. 5-3) provides:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (Art. 5-1-c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

For the same reasons as stated in respect of Article 5 para. 1 (Art. 5-1) above, the Commission finds that the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

4. The applicant alleges violation of Article 8 (Art. 8) of the Convention.

The Commission notes in this connection that the applicant brought a summons to challenge the outstanding conditions whereby he was required to remain in Jersey. As a result of those proceedings the conditions were indeed lifted. The applicant cannot therefore claim that he is the victim of an interference in his right to respect for his private or family life under Article 8 (Art. 8) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant also alleges a violation of Article 6 (Art. 6) of the Convention, in particular that the ex parte nature of the Order of Justice of 15 September 1993 rendered the proceedings unfair. The Commission considers that it cannot, on the basis of the file, determine whether there has been a violation of this provision without the observations of both parties.

The Commission therefore adjourns this part of the application.

For these reasons, the Commission, by a majority,

DECIDES TO ADJOURN its consideration of the complaints concerning the fairness of the proceedings, and

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber

President of the First Chamber

(M.F. BUQUICCHIO)

(C.L. ROZAKIS)