AS TO THE ADMISSIBILITY OF

Application No. 15023/89
by H.
against the United Kingdom

The European Commission of Human Rights sitting in private on 4 April 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mr. L. LOUCAIDES

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 3 March 1988 by H. against the United Kingdom and registered on 23 May 1989 under file No. 15023/89;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen of Irish extraction. He was born on 19 January 1947 in London and resides in East Preston, West Sussex.

The facts of the present case, as submitted by the applicant, may be summarised as follows.

The applicant has for many years suffered from a mental disorder and in 1985 he was prescribed the drug chlorpromazine, a tranquiliser, at a local mental health centre in Worthing. He states that at the end of May 1986 he stopped taking the drug for a few days because of its side-effect of drowsiness, and he subsequently became very emotional and depressed. On the evening of 6 June 1986, he consumed a number of alcoholic drinks in a local public house, and after a few hours he suddenly felt ill and began to shudder. He went outside, where he began to move involuntarily, and unintentionally put

his foot through some window panes. He was arrested by the police and taken to a police station, where he was seen by a general medical practitioner (although he had requested a psychiatrist) and charged under Section 1 (1) of the Criminal Damage Act 1971 with recklessly causing criminal damage. He was convicted by Worthing Magistrates Court on 5 March 1987, fined £25 and ordered to pay compensation of £49, all to be paid in £10 fortnightly instalments. Evidence was heard in his absence as he had been taken into hospital after taking too many tranquilisers. The applicant appealed on the ground of mental disorder to Chichester Crown Court, which dismissed the appeal on 4 September 1987 after a hearing at which he appeared and presented psychiatric reports, having been refused legal aid.

In criminal trials the burden of proof is upon the prosecution to prove beyond reasonable doubt all the elements of the case against the accused including his criminal intent, i.e. the mens rea of the offence. If the accused presents certain defences, such as an alibi or a claim of self defence, whilst certain evidence must be provided by the accused, nevertheless the legal burden of proof rests with the prosecution to disprove such claims. An exception to this legal onus lies with a defence of insanity. Everyone is presumed by law to be sane and accountable for his actions. If an accused seeks to rebut this presumption and pleads insanity, it is for the defence to substantiate the plea on the balance of probabilities. However, the prosecution must first prove beyond reasonable doubt that the accused did the act or made the omission charged.

To establish a defence of insanity the accused must present evidence that at the time of committing the act he was labouring under a defect of reason owing to a disease of the mind so as not to know the nature and quality of the act or that what he was doing was wrong. Acts committed under the influence of alcohol or drugs, or provoked by stress, racial harassment, economic or social disadvantage, but which were not related to a disease of the mind, do not fall within the defence of insanity. The common law on insanity is laid down in the McNaghten Rules of 1843.

COMPLAINTS

The applicant complains that the burden on the accused in criminal proceedings to prove insanity on the balance of probabilities is contrary to the presumption of innocence ensured by Article 6 para. 2 of the Convention. He submits that the criminal damage of which he was convicted was an act resulting from his mental disorder after having ceased to take his medication and after having consumed some beer. This cast doubt on his mens rea and the prosecution should have been required to prove his sanity, yet the courts allegedly failed to deal with this element of his defence and convicted him.

The applicant also alleges that the courts are prejudiced against people who are mentally ill, or who belong to certain ethnic groups like the Irish. He invokes Article 14 of the Convention read in conjunction with Article 6 para. 2.

THE LAW

1. The applicant complains that his conviction for criminal damage violated Article 6 para. 2 (Art. 6-2) of the Convention which provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The applicant submits that the law of insanity, laid down in the McNaghten Rules of 1843, imposed an unjustifiable burden on him to show that he was suffering from such a defect of reason owing to a disease of the mind as not to know the nature and quality of his act.

However, the Commission notes that the Rules of which the applicant complains do not concern the presumption of innocence, as such, but the presumption of sanity. In this context the Commission refers to the judgment of the Court in the Salabiaku case:

> "Presumptions of fact or of law operate in every legal system. Clearly, the Convention does not prohibit such presumptions in principle. It does, however, require the Contracting States to remain within certain limits in this respect as regards criminal law ...
> Article 6 para. 2 (Art. 6-2) does not ... regard presumptions of fact or of law provided for in the criminal law with indifference. It requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence."
> (Eur. Court H.R., Salabiaku judgment of 7 October 1988, Series A no. 141, para. 28)

The Commission observes that in English law the burden of proof remains with the prosecution to prove beyond reasonable doubt that the accused did act or make the omission charged. The Commission does not consider that requiring the defence to present evidence concerning the accused's mental health at the time of the alleged offence, constitutes in the present case an infringement of the presumption of innocence. Such a requirement cannot be said to be unreasonable or arbitrary. It finds, therefore, no appearance of a violation of Article 6 para. 2 (Art. 6-2) of the Convention in the present case. Accordingly, this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also complained of discrimination in the application of the presumption of innocence by courts against people who are mentally ill or who, like him, are of Irish origin. He invokes Article 14 (Art. 14) of the Convention which requires Contracting States to secure Convention rights and freedoms without discrimination on any ground.

However, the Commission finds no evidence whatsoever in the case-file that the applicant suffered discrimination in respect of his right under Article 6 para. 2 (Art. 6-2) of the Convention by virtue of his mental health or Irish origins. This part of the application is, therefore, also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)