AS TO THE ADMISSIBILITY

Application No. 13365/87
by Oladeinde AJINAJA
against the United Kingdom

The European Commission of Human Rights sitting in private on 8 March 1988, 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
Mrs. J. LIDDY

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 7 September 1987 by Oladeinde AJINAJA against the United Kingdom and registered on 26 October 1987 under file No. 13365/87;

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 citizen of Nigeria, born in 1952 and currently detained in H.M. Prison The Verne, Portland, where he is serving a six year prison sentence for a drug smuggling offence.

This is his second application to the Commission. In his first application (No. 12749/87, Dec. 15.5.87) the applicant complained, inter alia, of unlawful arrest, conviction and detention, contrary to Article 5 para. 1 (a) and (c), and Articles 3 and 4 of the Convention. The applicant was convicted by a competent court on 1 February 1985, his application for leave to appeal being dismissed by the Full Court of Appeal on 18 October 1985. The Commission declared the application inadmissible as being manifestly ill-founded, within the meaning of Article 27 para. 2 of the Convention.

In the present case the applicant claims to have relevant new

information in respect of his original claims, of which he seeks a second examination by the Commission. He submits that the date of introduction of the present application should be that of the first, namely 24 November 1986, or even earlier when he first made inquiries about the Commission's procedure on 16 November 1985. The purportedly relevant new information is as follows:-

The applicant states that he was given free legal assistance for the trial and preparation of the grounds of appeal. Defence counsel lodged the application for leave to appeal and also applied for legal aid and leave to call witneses. The single judge refused all three applications on 14 June 1985. The applicant made further applications to the Full Court of Appeal for leave to appeal, legal aid, leave to call witnesses and leave to be present at an eventual hearing. These applications were refused on 18 October 1985, in the absence of both defence counsel and the applicant.

COMPLAINTS

The applicant complains that the Court of Appeal denied him his minimum rights of defence, ensured by Article 6 para. 3 (c) and (d) of the Convention.

THE LAW

The applicant has complained that the leave to appeal proceedings before the Court of Appeal breached his rights under Article 6 para. 3 (c) and (d) (Art. 6-3-c-d) of the Convention which provide as follows:

> "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 insufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
> d. to examine or have examined witnesses on his behalf under the same conditions as witnesses against him."

However, the Commission is not competent to deal with the applicant's complaints because he has failed to observe the six months' rule laid down in Article 26 (Art. 26) of the Convention, the final decision in the case being that of the Court of Appeal on 18 October 1985, but the present complaints not being put before the Commission until 7 September 1987.

The applicant has contended that these complaints constitute relevant new information for the purposes of Article 27 para. 1 (b) (Art. 27-1-b) of the Convention, which warrant the re-opening of his previous application (No. 12749/87) with an introduction date of 16 November 1985. The Commission finds, however, that the applicant's present complaints are entirely different from his original complaints of unlawful arrest, conviction and sentence, contrary to Article 5 (Art. 5) of the Convention, and do not constitute new information relevant to the Commission's decision in the first application. Moreover, the Commission cannot accept, as a basis for reconsidering a case information, further submissions or re-formulated complaints which were known to the applicant and could clearly have been presented by him with the original application. The Commission concludes, therefore, that there are no grounds for re-opening the examination of Application No. 12749/87, or for considering the present application as constituting relevant, new information

necessitating a further examination of the applicant's original complaints of a breach of Article 5 (Art. 5) of the Convention as a new case, or for considering the date of introduction of the present application to be other than that of the applicant's letter dated 7 September 1987 when he first put to the Commission his complaints under Article 6 para. 3 (Art. 6-3) of the Convention.

In these circumstances, the Commission rejects the present application for non-observance of the six months' rule, pursuant to Articles 26 and 27 para. 3 (Art. 26, 27-3) 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)