AS TO THE ADMISSIBILITY OF

Application No. 14385/88
by Armen Rouben BAZIL
against the United Kingdom

The European Commission of Human Rights sitting in private on 10 March 1989, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
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. 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 23 September 1988 by Armen Rouben BAZIL against the United Kingdom and registered on 17 November 1988 under file No. 14385/88;

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 an Iranian citizen born in 1943 and resident in Birmingham. He is currently serving a prison sentence in H.M. Prison Dartmoor. The applicant is represented by Mr. Antony Burton, a solicitor. The facts as submitted by the applicant may be summarised as follows.

On 17 April 1985, the applicant returned from Pakistan to London and was intercepted at Heathrow by customs officers in possession of a false bottomed suitcase containing 2,48 kg of heroin. The applicant maintained that his own suitcase had been borrowed by R during his visit to Pakistan and that R had provided him with another suitcase in which, unknown to the applicant, the heroin was secreted.

On or about 19 April 1985, the applicant was assigned Mr. Booth of Messrs. Booth Bennett as solicitor under legal aid. This

solicitor was not chosen by the applicant. On 27 June 1985, the applicant was committed for trial. He was first visited by Mr. Booth on 29 August 1985, followed by visits on 18 September and 31 October. On 1 December 1985, the applicant wrote to Mr. Booth asking for the complete contents of his file. Mr. Booth did not comply with the request or answer the letter.

On 14 December 1985, the applicant approached Mr. Burton (who represents the applicant before the Commission), asking him to act on his behalf since he was in the process of dismissing his current solicitor. Mr. Burton replied that he would be prepared to act if the court agreed to a change in the legal aid order. On 27 December 1985, the applicant requested Mr. Booth to transfer the legal aid to the solicitor of his choice. On 28 December 1985, the applicant notified the clerk of the Crown Court of his desire to change his solicitors.

The Crown Court contacted Mr. Booth requesting observations on the applicant's application before the Court decided the matter. On 3 February 1986, Mr. Booth informed the Chief Clerk of the Court that Counsel had now been briefed, that a considerable amount of investigative work had been done, that costs were estimated at £1,000, that his firm had spent 10 hours with the applicant since his committal and that they did not understand why the applicant wished to change.

By letter dated 5 February 1986, the Chief Clerk informed the applicant that his application to change solicitors had been refused because, inter alia, Counsel had been instructed and the hearing fixed for 17 March 1986. The applicant replied on 8 February 1986 that he had not been given the opportunity to justify his request and asked to put his reasons before the Court. He stated that he found his solicitor's conscientiousness questionable and the manner of handling his case objectionable. On 13 February 1986, the Chief Clerk wrote to the applicant cautioning him that he had made serious allegations concerning his solicitor and that the Court would take a very serious view if they were found to be without foundation. The Chief Clerk also wrote to the applicant's solicitor referring to the applicant as "this wretched man" and asking him to attempt to make him see reason.

On 14 February 1986, the applicant attended a conference with his solicitor and barrister.

On 18 February 1986, the applicant appeared before Mr. Justice Murchie to present his request for a change in solicitors. The judge heard representations from the applicant and the applicant's current solicitor. He refused the applicant's application, on the grounds inter alia, of the proximity of the trial and that the applicant's complaints were groundless. He also advised the applicant that his solicitor and counsel were experienced in this type of case.

On 18 March 1986, the applicant's co-defendant applied to adjourn the trial in order that a defence witness could be traced. The application was granted and the case transferred to a different Crown Court and fixed for trial on 2 June 1986.

On 2 June 1986, on the opening of the hearing, the applicant applied to the trial judge for a change of his solicitor. Following the refusal of his application, the applicant dismissed his solicitor and counsel and thereafter appeared unrepresented.

At the end of the trial, the applicant was found guilty and sentenced to 9 years' imprisonment with a recommendation for deportation. He applied for leave to appeal, having drafted his own grounds. His application was rejected by a single judge of the Court of Appeal. The applicant instructed solicitors and counsel to renew the application and leave to appeal was granted by the full court on

3 November 1987.

The appeal, presented by counsel acting for the applicant, was heard by the Court of Appeal on 28 and 29 March 1988. The Court dismissed the appeal, finding that the applicant had failed to give any cogent reason to support his application to change his solicitors and that the judge had not exercised his discretion improperly in refusing the application. The Court also held that the applicant had acted unreasonably on the first day of his trial in dismissing his counsel of whom he had made no criticism. The Court found no substance in the criticisms made of the trial judge's conduct of the trial or her summing-up. The applicant's appeal against conviction and sentence was dismissed.

On 28 June 1988 the Court refused leave to appeal to the House of Lords and refused to certify a point of law of general public importance.

COMPLAINTS

The applicant complains of a violation of Article 6 para. 3 (c) of the Convention in that he was unreasonably denied the opportunity to be represented by a solicitor or barrister of his own choosing or in whom he was confident and that he was unreasonably required to conduct his trial unrepresented.

The applicant also complains that he was denied a fair trial contrary to Article 6 para. 1 in that the prosecution had referred in evidence to prejudicial admissions made by the applicant and that neither the judge nor the prosecution had explained to the applicant which evidence might have been inadmissible.

THE LAW

1. The applicant complains that he was denied the opportunity to be represented by a solicitor and barrister of his own choosing contrary to Article 6 para. 3 (c) (Art. 6-3-c) of the Convention, which provides :

> "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 Commission recalls its case-law to the effect that Article 6 para. 3 (c) (Art. 6-3-c) does not guarantee the right to choose an official defence counsel who is appointed by the Court. Nor does it guarantee a right to be consulted with regard to the choice of an official defence counsel (see e.g. No. 6949/75, Dec. 6.7.76, D.R. 6 p. 114). Further, where an applicant is represented by an officially appointed defence counsel the above provision cannot be interpreted so as to secure to the accused a right to change such officially appointed counsel without well-founded and substantiated reasons (No. 11349/85, Dec. 5.5.86, unpublished).

In the present case, the applicant applied to the Court before his trial to change his solicitor. After hearing the applicant, the judge refused the application on the ground, inter alia, that the applicant's complaints against his solicitor were groundless. His application on the first day of his trial was also refused by the trial judge, following which the applicant chose to dismiss both his solicitor and counsel and to represent himself. The Commission recalls that the applicant appealed to the Court of Appeal which, having examined the applicant's complaints, dismissed his appeal in this

context on the ground, inter alia, that the applicant had failed to give any cogent reason to support his application to change his solicitor.

In these circumstances, the Commission finds that the refusal to allow the applicant to change his solicitor did not constitute a violation of Article 6 para. 3 (c) (Art. 6-3-c) 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.

2. The applicant has also complained that he was denied a fair trial contrary to Article 6 para. 1 (Art. 6-1) of the Convention since the prosecution had referred to prejudicial admissions made by the applicant and that neither the judge nor the prosecution had drawn to the attention of the applicant evidence which might have been inadmissible.

With regard to the proceedings of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

The Commission recalls that in the present case the applicant was able to appeal to the Court of Appeal raising his complaints concerning the proceedings at first instance. The Court of Appeal however dismissed the appeal, finding that these criticisms had no substance in them. The Commission finds no appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this part of the application is 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)