AS TO THE ADMISSIBILITY OF

Application No. 26282/95
by William BURNS
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
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 9 September 1994 by William BURNS against the United Kingdom and registered on 24 January 1995 under file No. 26282/95;

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 is a United Kingdom national, was born in 1949 and is resident in Queensferry, Scotland.

A. The particular facts of the case

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

On 18 February 1993 the applicant had been drinking in a bar and took a taxi. Having refused to pay the £11.00 fare, the applicant consented to being driven in the taxi to a police station where the matter was dealt with by two police officers. Approximately three weeks later the applicant received a summons from the Procurator Fiscal's office with the charge of incurring a taxi fare without paying or intending to pay it. In a letter dated 17 May 1993 to the Procurator Fiscal's office, the applicant accused the two police officers of stealing £11.00 from him when he was in the police station which episode was, he alleged, revenge by the Masonic Lodge for complaints he had previously made in relation to the police. The Procurator Fiscal replied by confirming that a police investigation would be carried out. By letter dated 8 June 1993 the Procurator Fiscal's office refused the applicant's request for copies of the statements of the prosecution witnesses.

The case was first before the District Court on 10 May 1993 when the applicant pleaded not guilty to the charges and the hearing took place on 17 December 1993. The applicant was not legally represented. The taxi-driver and the two police officers gave evidence and were cross-examined by the applicant. Both police officers stated that the applicant had been cautioned and charged, was not put in a cell as he alleged, that the applicant left the police station having completed the necessary procedures after approximately one hour, that the applicant had not offered to pay the taxi fare and that he had £16.53 with him on entering and on leaving the police station. When the applicant put it to those officers that he had more money with him, the Procurator Fiscal objected to the line of questioning stating that the matter was irrelevant to the charges. The trial judge agreed.

The applicant then submitted that the case against him should be struck out as there was no case to answer. This application was refused and the applicant proceeded to give evidence stating that he had disagreed over the amount of the taxi fare. The applicant claimed that he had approximately £60.00 when he entered the police station and he applied for an adjournment in order to allow him to present witness evidence to this effect which would counter the evidence to the contrary given by the police officers. The judge refused the application on the basis that the applicant had ample time before the hearing to call defence witnesses having been advised of the need to do so in the notice of trial issued. The trial judge also felt that it was inappropriate at that stage to adjourn the proceedings. The applicant then closed his case and led no witnesses. The judge found the applicant guilty as charged. The applicant denied previous convictions and, subsequently, on the receipt of the proofs of those convictions he was sentenced on 18 February 1994 to pay a £60.00 fine and the taxi fare within eight weeks.

The applicant appealed to the High Court against his conviction and sentence. He filed a six page document containing his grounds of appeal challenging, inter alia, the trial judge's refusal to strike out the case against him or to adjourn the proceedings, the trial judge's findings on the facts and his sentence. On 19 April 1994 the District Court judge completed a detailed report on, inter alia, the District Court proceedings, the evidence led by the parties and her findings of fact. By letter dated 3 June 1994 the Deputy Chief Constable informed the applicant that no proceedings were to be issued against the police officers pursuant to his complaint.

On 30 August 1994 the High Court, having held a hearing, delivered a detailed judgment rejecting the appeal. The judgment notes that the High Court declined to allow the applicant to read his prepared statement aloud. The court could see no purpose in such an exercise since the three judges had already had the benefit of reading that statement. As regards the refusal to adjourn the hearing at first instance, the High Court found that the applicant was aware of the existence of his witnesses and their evidence on the date of the trial and concluded that the trial judge's decision not to adjourn was well founded.

On 22 September 1994 the District Court office demanded the payment of the fines in default of which a warrant of arrest could issue. By letter dated 24 September 1994 the applicant stated that he would not pay or acquiesce with "the lawless freaks in the Satanic cult". An arrest warrant subsequently issued, the applicant was arrested on 10 June 1995 and he was detained until the following Monday morning, 12 June 1995, when he was brought before the District Court. The applicant agreed before that court to pay the fine and taxi fare in default of which he would have to serve seven days imprisonment.

On 14 June 1995 the applicant complained about his arrest to the Chief Constable. The latter responded that it was a lawful arrest

pursuant to an arrest warrant. The applicant replied by accusing the Chief Constable of having an allegiance with the "Satanic cult of Freemasonry's Get-Burns-Task-Force". By letter dated 16 June 1995 the applicant informed the Procurator Fiscal that he had reconsidered and would submit to imprisonment rather than pay the fine. Accordingly, from 30 June to 6 July 1995 the applicant served a prison sentence.

B. Relevant domestic law and practice

While there is no obligation on the prosecution to provide a list of prosecution witnesses to the defence, as a matter of practice the Procurator Fiscal provides a list of such witnesses on request on the basis that the defence will reciprocate by providing a list of their witnesses. Also as a matter of practice, the defence can discuss with the Prosecutor Fiscal the nature of the prosecution evidence in order that the defence may arrange, for example, the precognitions they find necessary or consider an appropriate plea. There is no entitlement to obtain copies of the prosecution witness statements.

The defence may request precognition of prosecution witnesses which means that those witnesses may be requested to submit to questioning by the defence prior to the trial. There is no obligation on the prosecution witness to give precognition although there is some authority for the view that it is part of that person's civic duty to do so. If a witness is reluctant, the defence can apply to the court for precognition on oath. While there is some authority for the view that precognition on oath should only be allowed in exceptional circumstances, it has been held that the object of the statutory provision is to place the defence on equal terms with the prosecution in the preparation of the case (Brady v. Lochart 1985 SCCR 349).

COMPLAINTS

The applicant complains that he was treated unreasonably by the courts due to a conspiracy against him by the Satanic cult of Freemasonry which involved, inter alia, the police, the courts and the Procurator Fiscal. He complains under Article 6 para. 2 that he was convicted when he was known to be innocent. He also complains under Article 6 para. 3(a) of the Convention that he was not charged or cautioned by the police and under Article 6 para. 3(d) that he was refused an adjournment of the trial at first instance.

He further complains under Article 10 of the Convention that the High Court did not allow him to express himself fully as regards his appeal and under Article 14 of the Convention that he was discriminated against because of the conspiracy against him. He further complains that he was detained in a prison cell on the night of 18/19 February 1993 and that the police officers lied about this also.

THE LAW

1. The applicant complains that he was treated unreasonably by the courts, convicted when known to be innocent and alleges a conspiracy by the "Satanic cult of Freemasons" involving the courts, the Procurator Fiscal and the police. He specifically complains that he was not allowed an adjournment to call defence witnesses. In this respect, he submits that the two police officers lied in evidence as regards the amount of money he had with him when he arrived at the police station and submits that, since he was not allowed copies of their statements prior to the hearing, he was accordingly taken by surprise by their evidence and he should have been granted the adjournment to establish the true facts. The High Court on appeal, according to the applicant, ignored the statements he obtained from those defence witnesses. In these respects, the applicant invokes Article 6 paras. 2 and 3(d) of the Convention

Since the specific guarantees contained in paragraph 3 of

Article 6 (Art. 6-3) of the Convention are specific aspects of the general concept of a fair trial set forth in paragraph 1 of this Article, in the circumstances of the present case, the Commission will consider the complaint under Article 6 para. 3(d) (Art. 6-3-d) from the angle of paragraph 1 of Article 6 (Art. 6-1) of the Convention taken together with the principles inherent in paragraph 3 of that Article. (see, for example, Eur. Court HR, Unterpertinger v. Austria judgment of 24 November 1986, Series A no. 110, p. 14, para. 29). The Commission also considers that the applicant's allegation made under Article 6 para. 2 (Art. 6-2) of the Convention, as to he being convicted when it was known that he was innocent, is more properly considered under Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

With regard to the judicial decisions in the case, 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 errors of law or fact on the part of 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, for example, No. 12505/86, Dec. 11.10.88, D.R. 58 pp. 106, 110 with further references).

The Commission further recalls that as a general rule, it is for the national court, and in particular for the court of first instance, to assess the evidence before them as well as the relevance and admissibility of the evidence which the accused seeks to adduce. Article 6 para. 1 (Art. 6-1) of the Convention does not give an unlimited right to have witnesses called and domestic courts may exercise some discretion, provided that the Convention and particularly the right to a fair hearing are respected in deciding whether the hearing of defence witnesses is likely to establish the truth (Eur. Court HR, Barbera, Messegue and Jabardo v. Spain judgment of 6 December 1988, Series A no. 146, p. 31, para. 68, No. 8417/78, Dec. 4.5.79, D.R. 16 p. 200 and No. 8231/78, Dec. 6.3.82, D.R. 28 p. 5).

Furthermore, only exceptional circumstances could lead the Convention organs to conclude that a refusal to hear defence witnesses violated Article 6 (Art. 6) of the Convention (see Vidal v. Belgium, Comm. Report 14.1.91, Series A no. 235-B, pp. 38-39, paras. 47-49 and Eur. Court H.R., Bricmont v. Belgium judgment of 7 July 1989, Series A no. 158, p. 31, para. 89). The complete silence, for example, of a judgment as to why a court rejected the hearing of a defence witness is not consistent with the requirements of Article 6 (Art. 6) of the Convention (see Eur. Court H.R., Vidal v. Belgium judgment, loc. cit, pp. 32-33, paras. 33-34).

As to the present applicant's complaint about the refusal of an adjournment in order to allow him to call defence witnesses, the Commission notes that the applicant wished to introduce witness evidence to counter evidence given by the police officers that the applicant had £16.53 with him on arrival and on leaving the police station, the applicant maintaining that he had approximately £60.00 and that the police officers stole money from him at the station. However, the Commission notes that the issue before the court was whether or not the applicant incurred a taxi fare of £11.00 without paying or intending to pay it and not whether the police officers misappropriated money from him or not.

Insofar as the applicant submits that proof of his allegation of theft would have discredited the evidence given by the police officers in relation to the charge against him, the Commission notes that the applicant claims that the police officers' evidence as to the amount of money he retained and their denial of theft during the trial, took him by surprise and he should therefore have been granted the adjournment. However, the Commission notes that approximately six months before the hearing the applicant lodged a complaint with the Procurator Fiscal about alleged theft by those officers and therefore the issue was not something which arose during the trial. In addition, the Commission does not consider that it was unforeseeable that those officers, in responding on cross-examination to questions posed by the applicant, would have denied a charge of theft.

Moreover, the trial judge carefully considered the application for the adjournment. The judge refused the application on the basis, inter alia, that the applicant had ample time before the hearing to call defence witnesses having been advised of the need to do so when the notice of trial issued. The High Court similarly considered this submission by the applicant concluding that the applicant was aware of the relevant defence evidence and witnesses on the day of the trial. Furthermore, the Commission notes that, while there is no entitlement to copies of the prosecution witness statements, the applicant has submitted no evidence to demonstrate that he made any application for a list of the names of prosecution witnesses, that he requested an indication from the Prosector Fiscal as to the nature of the prosecution evidence, that he attempted to take precognition of any prosecution witness prior to his trial or that he applied to take precognition on oath in the case of a reluctant witness.

In such circumstances, the Commission considers that the refusal of the adjournment of the trial does not disclose a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

As to the applicant's complaints about unreasonable treatment, about a conspiracy against him and about he being convicted when the authorities knew that he was innocent, the Commission finds no evidence of a conspiracy as described by the applicant or at all or that the applicant was convicted other than on the basis of the evidence against him. In addition, it is noted that the hearing took place approximately nine months after the summons issued against him, that the applicant was given every opportunity to arrange his defence witnesses prior to the trial, to make his case during the trial and to cross-examine prosecution witnesses, that both courts carefully considered the applicant's submissions and applications, that the District Court delivered a detailed and reasoned report on the trial and that the High Court's judgment was similarly detailed and reasoned. In such circumstances, the Commission finds that these complaints of the applicant do not disclose a violation of Article 6 (Art. 6) of the Convention.

Accordingly, the applicant's complaints under Article 6 (Art. 6) of the Convention are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 6 para. 3(a) (Art. 6-3-a) of the Convention that he was not cautioned or charged. He also complains about being placed in a prison cell on the night of 18/19 February 1993. The Commission considers that such matters are more appropriately considered under Article 5 (Art. 5) of the Convention. However, the Commission notes that the only evidence submitted by the applicant in these respects is his suggestion, made to the police officers during their cross-examination by him, that he was not charged or cautioned and was so placed in a prison cell which suggestions were denied by both police officers. The Commission finds that insofar as the applicant's submissions in this respect raise

issues under Article 5 (Art. 5) of the Convention, they are unsubstantiated and, accordingly, manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant further complains under Article 10 (Art. 10) of the Convention that the High Court did not allow him to read aloud the terms of his notice of appeal or of his prepared statement during the appeal hearing and because he was not allowed to "express the full terms of his appeal" at that hearing. The Commission has also considered this complaint under Article 6 (Art. 6) of the Convention.

The Commission notes that the High Court had before it the applicant's detailed notice of appeal (six pages) together with a copy of his prepared statement. The High Court could not see any purpose in allowing the applicant to read out his prepared statement since the judges already had a copy of it before them. The Commission notes that the applicant's detailed grounds of appeal were also before the High Court, they having been previously filed in the High Court office. It is also noted that the applicant does not allege that the judges of the High Court did not have or did not read those documents. In addition, the applicant has not specified in what other respect he was not allowed to adequately express himself nor has he submitted that he was prevented from making any oral submission.

In such circumstances, the Commission considers that this complaint of the applicant does not disclose a violation of Articles 6 or 10 (Art. 6, 10) of the Convention and, accordingly, is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. Finally, the applicant further complains under Article 14 (Art. 14) of the Convention that he was discriminated against because of the alleged conspiracy by the "Satanic cult of Freemasons" against him.

The Commission recalls that this Article protects individuals in analogous situations from a discriminatory difference in treatment in the exercise of the rights and freedoms recognised by the Convention and its Protocols. The Commission considers that the applicant's allegations as to a conspiracy against him are unsubstantiated and that the application does not otherwise disclose any difference in treatment of the applicant as regards the rights and freedoms recognised by the Convention and its Protocols. The Commission therefore considers that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber