AS TO THE ADMISSIBILITY

Application No. 12279/86
by Richard CARLESS
against the United Kingdom

The European Commission of Human Rights sitting in private on 4 May 1987, the following members being present:

MM. C.A. NØRGAARD, President
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs G.H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ

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 October 1985 by Richard CARLESS against the United Kingdom and registered on 17 July 1986 under file No. 12279/86;

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 born in 1942 and resident in Basildon. The facts as submitted by the applicant may be summarised as follows.

The applicant is a London cab-driver. He is also a registered asthmatic and bronchitis sufferer.

In or about January 1985, when the applicant was waiting for fares at Heathrow airport, he was approached by a man smoking a large pipe who wished to take a taxi. The applicant explained his health condition and requested the man either to refrain from smoking while in his cab or otherwise take the cab behind. The man said he would take the next cab. A traffic warden noticed this incident however and the applicant was charged with refusing to take a fare under section 9(5) of the Heathrow Airport Byelaws.

The applicant was tried before Uxbridge Magistrates' Court and fined £20. He was supported in his defence by A.S.H., an anti-smoking organisation, who were able to fund his appeal and provide him with representation. He appeared before the Crown Court on 23 November

1985 and on his appeal being dismissed, the fine was increased to £110 plus costs. A.S.H. was unable to help the applicant further. He then applied unsuccessfully for legal aid to take the case to the High Court. His application was refused on appeal on 9 April 1986 on the ground inter alia that he did not have a reasonable chance of success. The applicant refused to pay the fine and on 15 July 1986 received a sentence of seven days imprisonment which was confirmed on appeal. The applicant served three days of his sentence in Pentonville and was released on 18 July 1986.

While in prison, the applicant wanted to contact both the European Commission of Human Rights and his elderly mother in order to let her know where he was. He alleges that he made such a request twice to the prison governor but was refused. There is however no record of such request being made.

COMPLAINTS

The applicant complains of being refused legal aid to take his case to High Court in violation of Article 6 para. 3 (c)and Articles 13 and 14 of the Convention. He considers his punishment was excessive and totally unjust, in which respect he invokes Articles 3, 5 and 7 of the Convention. He also claims that he has been prevented from following his convictions contrary to Article 2 of Protocol No. 1.

The applicant also complains that while in prison the governor refused to allow him to contact his elderly mother or the European Commission on Human Rights contrary to Articles 8 and 10 of the Convention. He also contends that he was prevented from attending church or speaking to the other prisoners contrary to Articles 9 and 11 of the Convention. He further complains of having to share a cell with a prisoner who smoked and of being subjected to an excessive delay in receiving necessary medication.

The applicant also invokes Article 19 of the Convention and Article 1 of the Fourth Protocol.

THE LAW

1. The applicant complains of being prevented from writing to the Commission and to his mother when he was detained in Pentonville Prison contrary to Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention provides that:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission notes however that the applicant was in fact detained in prison for only three days and that there is no record that he made a request to write to the Commission or to his mother. In these circumstances the Commission finds that the applicant has failed to establish that there has been any real or effective interference with his rights 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.

The Commission has also given consideration to the applicant's complaint concerning correspondence to the Commission in the context of Article 25 para. 1 (Art. 25-1) in fine of the Convention which provides that those High Contracting Parties who have made a declaration recognising the Commission's competence to receive individual petitions undertake not to hinder in any way the effective exercise of this right. The Commission finds however that, in the circumstances of the present case, in particular, the shortness of time involved in the alleged restriction of the applicant's correspondence with the Commission, there was no real hindrance to the applicant in the presentation of his complaints before the Commission. The Commission concludes therefore that it need take no further action in respect of the alleged interference with the applicant's exercise of the right of individual petition within the meaning of Article 25 (Art. 25) of the Convention.

2. The applicant also complains of a breach of Articles 6 para. 3 (c), 13 and 14 (Art. 6-3-c, 13, 14) of the Convention in respect of the refusal of legal aid to enable him to take his case to the High Court.

The Commission notes however that legal aid was refused on the grounds inter alia that he had no reasonable prospect of success. The Commission finds no indication from the application as it has been submitted, that proper consideration was not given to the question whether the interests of justice required that he should be granted legal aid. In these circumstances the Commission finds no appearance of a violation of Articles 6 para. 3 (c), 13 or 14 (Art. 6-3-c, 13, 14) 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.

3. The applicant also complains that his punishment was totally unjust and excessive and that he has been prevented from following his convictions. He invokes Articles 3, 5, 7 (Art. 3, 5, 7) of the Convention and Article 2 of Protocol No. 1 (P1-2).

The applicant also complains of being prevented from attending church or associating with other prisoners while in prison, of a delay in receiving medication and of sharing a cell with someone who smoked. He also invokes Article 19 (Art. 19) of the Convention and Article 1 of the Fourth Protocol (P1-4).

The Commission notes first of all that the United Kingdom is not a party to the Fourth Protocol and accordingly finds that the complaint concerning Article 1 of the Fourth Protocol (P1-4) must be dismissed as incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The Commission has examined the applicant's remaining complaints as they have been submitted by him. However, after considering the case as a whole, the Commission finds that the applicant's complaints have not been substantiated and that the petition does not generally disclose any appearance of a violation of the rights and freedoms set out in the Convention.

It follows that this part of the application is as a whole 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 and

DECIDES TO TAKE NO FURTHER ACTION IN RESPECT OF THE ALLEGED INTERFERENCE WITH THE EFFECTIVE EXERCISE OF THE RIGHT OF INDIVIDUAL PETITION.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)