AS TO THE ADMISSIBILITY OF

Application No. 26903/95
by Anthony COLLMAN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 18 January 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
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 24 January 1995 by Anthony COLLMAN against the United Kingdom and registered on 28 March 1995 under file No. 26903/95;

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 British citizen born in 1953. He lives in London. The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was convicted of reckless driving at Middlesex Guildhall Crown Court on 9 July 1992. He was fined £100.00 and ordered to pay £30.00 compensation to each of the two policemen he had driven at. He represented himself at the trial.

The applicant did not pay the sums due, and on 17 June 1993 was committed to prison for 21 days by the Marlborough Magistrates' Court that is, a period of 14 days in default in respect of the conviction on 9 July 1992, and a further, consecutive, period of 7 days in default in respect of a separate financial imposition (an order for costs by the Knightsbridge Crown Court) of 27 January 1992.

The total of 21 days' detention in default was reduced to a total of 14 days by the Marlborough Street Magistrates' Court on 21 June 1993. The applicant served the period of detention.

On 22 November 1993 the applicant applied, in connection with the conviction of 9 July 1992, for an extension of time, for leave to

appeal against conviction and sentence, and for legal aid. The application was refused by a single judge of the Court of Appeal on 9 June 1994. The judge stated "the judge was right to hold that this was a case of all or nothing. The lesser verdict of careless driving did not arise on the way in which the case was presented to the court. The judge was perfectly entitled, when carrying out the sentencing exercise, to make the compensation orders based on the evidence heard by her during the trial". All applications were refused.

The applicant renewed his applications to the full Court of Appeal, which rejected them on 19 August 1994. The Court held:

> "... [The applicant] appeared at Middlesex Guildhall Crown Court on 9 July 1992, where he was tried. [He] appeared in person. The judge at the trial directed the jury that either the defendant, as he then was, drove recklessly or he did not. She was right to do so. The applicant now says that she should have left careless driving to the jury, though at the time he agreed that it was "an all or nothing case". It is the duty of the judge to define the issue in the case for the jury. She did. This application fails.
>
> The applicant has submitted in writing further complaints about his trial, none of which have any substance whatever. For all those reasons this application is refused."

COMPLAINTS

The applicant alleges violation of Articles 6 paras. 1 and 3(c) of the Convention, and of Articles 6 para. 2, 7, 13 and 14 of the Convention.

In connection with Article 6 para. 1 of the Convention, the applicant alleges that the trial judge erred in putting the case to the jury in the way she did. He also complains that he was not permitted to put his case in person before the Court of Appeal, and states that he had neither funds to engage a legal representative for the hearing nor legal aid for the Court of Appeal hearing.

The applicant also alleges that the absence of legal aid for the proceedings before the Court of Appeal was in violation of Article 6 para. 3 (c) of the Convention, and that it discriminated against him on the grounds of his status as a pauper, contrary to Article 14 of the Convention.

The applicant also alleges a violation of Article 6 para. 2, Article 7, and Article 13 of the Convention. In connection with Article 7 of the Convention, he claims that a compensation order should not have been made because the Powers of Criminal Courts Act 1973 under which the compensation order was made excludes "accidents".

THE LAW

1. The applicant alleges a violation of Article 6 para. 1 (Art. 6-1) of the Convention in connection with the way in which the judge put the case to the jury.

The Commission notes that both the single judge of the Court of Appeal and the Court of Appeal mentioned that at the trial, the applicant had agreed that it was an "all or nothing case", that is, that if the facts alleged were made out, then he was guilty of reckless driving, and that if they were not made out, then he was guilty neither of reckless nor of careless driving.

In these circumstances, the Commission finds no unfairness in connection with this part of the application.

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 also alleges violations of the Convention in connection with the leave to appeal proceedings. In particular, he complains that he did not have legal aid for those proceedings, and that he was not permitted to put his case in person to the Court of Appeal. He also alleges that the proceedings before the Court of Appeal were not public as, although he was present and the judgment was delivered publicly, a member of the public who had been present would not have known the contents of the applicant's application for leave to appeal, as he was not given a chance to address the Court of Appeal, and the Court of Appeal did not refer to his arguments, but merely dismissed them wholesale.

The Commission first notes that the applicant does not complain that he did not have legal aid at first instance. It further notes that he did not apply for leave to appeal within the prescribed time limit of 14 days (for a description of leave to appeal proceedings, see Eur. Court H.R., Monnell and Morris judgment of 2 March 1987, Series A no. 115, p. 12- 14, paras. 23 - 27). The single judge and the Court of Appeal did not, however, reject the application for leave as being out of time, and so the Commission will deal with the substance of the applicant's complaints.

The Commission recalls that in the above-mentioned Monnell and Morris judgment, the European Court of Human Rights found that neither the absence of an oral hearing nor the absence of legal aid before the Court of Appeal in leave to appeal proceedings violated Article 6 para. 1 or para. 3 (c) (Art. 6-1, 6-3-c) of the Convention.

The present case is different from the case of Monnell and Morris in that the applicant had not had legal aid at first instance - apparently because he did not apply for it - and so did not have the benefit of legal advice as to whether to appeal. However, it is also different in that the applicant suffered no adverse consequence from his unsuccessful application for leave to appeal, and in that he was in fact present at the Court of Appeal's hearing on 19 August 1994.

In the light of the conclusions of the Court in the above-mentioned Monnell and Morris case, the Commission finds in the particular circumstances of this case that the absence of legal aid for the leave to appeal proceedings did not conflict with the requirements of Article 6 para. 3 (c) (Art. 6-3-c) of the Convention. Given that the applicant, but not the prosecution, was present before the Court of Appeal on 19 August 1994, the Commission also finds the principle of equality of arms was met, and that the making of written submissions only on the applicant's applications for leave to appeal did not otherwise "put the accused at a disadvantage" (see above-mentioned Monnell and Morris judgment, p. 24. para. 62, with further references).

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.

3. The applicant alleges that the Powers of Criminal Courts Act 1973 does not apply to accidents, and that it should therefore not have been applied in his case. He considers that Article 7(Art. 7) has been violated. Article 7 (Art. 7) of the Convention provides as follows.

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

Section 35 (3) of the Powers of Criminal Courts Act 1973 provides, so far as relevant, that "no [compensation] order shall be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road ...". The applicant, however, was not involved in an "accident" but was convicted of driving (recklessly) at two policemen. In any event, Article 7 (Art. 7) of the Convention prohibits retroactive criminal legislation and penalties. The Powers of Criminal Courts Act 1973 was in force when the applicant committed the offence in issue in the present case, and so the complaint under Article 7 (Art. 7) is misconceived.

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.

4. The applicant makes further complaints under Articles 6, 13 and 14 (Art. 6, 13, 14) of the Convention.

The Commission has examined these complaints, and finds, to the extent that they are substantiated and are within its competence, that they do not disclose any appearance of a violation of the provisions referred to.

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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)