AS TO THE ADMISSIBILITY OF

Application No. 28779/95
by Tara CUMBER
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

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 14 September 1995 by Tara CUMBER against the United Kingdom and registered on 27 September 1995 under file No. 28779/95;

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 1973. She lives in Havant, in Hampshire, and is represented before the Commission by Mr. C. Taylor, barrister, of Chichester.

At 7.40 in the morning of 26 June 1989, the applicant and her mother were arrested in connection with a suspected attempted theft of a display of cami-knickers 20 days earlier. The applicant was taken to the Central Police Station in Portsmouth, dressed in a T-shirt, shorts and slippers. She had not had breakfast.

When the applicant arrived at the police station at 8.20 a.m., the custody officer did not comply with Section 37 of the Police and Criminal Evidence Act 1984, which requires the custody officer to release a person if he determines that there is insufficient evidence to charge him, unless he reasonably believes that detention without charge is necessary inter alia to obtain evidence by questioning.

At 11.25 a.m. the applicant's mother, having viewed the video tape of the incident at the shop with the policeman, stated that the other woman on the video was not her daughter, and was entirely unlike her. At 12.28 p.m. the applicant was removed from her cell and viewed the video with her solicitor and the policeman. According to the evidence of the applicant and the solicitor, all three laughed derisively at the possibility that the woman on the tape could be the applicant. No formal interview took place, and the applicant was

released at 12.55 p.m.

In November 1991 the applicant brought a civil action against the police, claiming that she had initially been wrongfully arrested, and thereafter wrongfully detained. The case was tried by a judge and jury before the Portsmouth County Court on 20 and 21 May 1993. The jury found, on the evidence before it, that the circumstances were not such that the policeman should have realised that the applicant was not the person on the video, and so the arrest itself was lawful.

As to the subsequent detention, the custody officer had accepted that he could not give any reasons to justify the applicant's detention from 8.20 onwards, and the judge directed the jury that that detention had been wrongful. The judge explained to the jury that they had to decide on the level of damages for the wrong perpetrated on the applicant. He described the two types of damages, general and exemplary, and told the jury that they had to bear in mind all the circumstances and strike a proper balance. He invited the jury to consider both general and exemplary damages, and to come up with one final global figure as the total. When the jury returned, the following exchange took place.

"Court clerk: Have you agreed a figure for damages?

Foreman: Yes.

Court clerk: What is the figure of damages you award?

Foreman: Nothing. [Pause]

The applicant's representative: Your Honour, one feels that one has to consider this. I suspect - given that one must have at least a penny ...

Foreman: Your Honour, may I say something? The Jury understood that there were two parts to the question. The second part we have also ...

Judge: What I directed you to do was to consider the figure of damages for general damages and then to consider a figure of exemplary damages, and then to add the two together and come up with a total figure.

Foreman: I am sorry, sir, we misunderstood that.

Judge: Let me ask you this then. Have you agreed a figure of damages for general damages?

Foreman: Yes, we have.

Judge: What is the figure for that?

Foreman: Fifty pounds.

Judge: And did you consider the question of exemplary damages?

Foreman: Sorry - yes, we did.

Judge: And you concluded on that that you would make no award of damages?

Foreman: On exemplary damages we concluded it would be fifty pounds.

Judge: So no general damages, but fifty pounds exemplary damages? I see. I think I should invite the jury technically to award one penny for the general damages, should I not?

The applicant's representative: No, your Honour, because other steps may flow from this. The jurors' verdict is nothing, and that may be challenged elsewhere.

Judge: So I will simply record that the award of damages is fifty pounds exemplary damages. Very well."

The judge gave leave to appeal and the applicant was awarded costs.

The Court of Appeal considered the case on 23 January 1995 (TLR, 28 January 1995, p. 32). It considered that the jury's verdict was perverse, as the applicant had suffered an infringement of her rights as a citizen not to be detained without just cause. She had been under 16 at the time of the detention, and had been taken to the police station in T-shirt, shorts and slippers. She hated confined spaces and had been frightened, tearful and distressed. For the jury not to have awarded her compensatory damages was perverse and irrational.

The Court of Appeal decided not to order a re-trial, but rather exercise its powers under Order 59 rule 11 of the Rules of the Supreme Court and make its own award. The Court of Appeal awarded £350.00.

The House of Lords refused leave to appeal to it on 19 July 1995.

COMPLAINTS

The applicant alleges a violation of Article 5 para. 5 and Article 13 of the Convention in connection with the compensation she received for her wrongful detention. She claims that:

- £350.00 does not reflect the seriousness of the breach of her rights;

- the figure is insufficient to discourage infringements of human rights;

- the average award by juries for wrongful imprisonment exceeds £500.00 per hour in compensatory damages alone, and the award was supposed to be in lieu of a retrial by jury;

- this is the first time the domestic courts have ruled on the quantum of an award for breach of Article 5, so that the case is likely to be influential in the English system of precedents;

- £350.00 is insufficient to justify the grant of legal aid, and legal aid is now being refused in similar cases on the basis of the applicant's case, and

- £350.00 is such a small award that it is out of all proportion to the costs of an action, and is likely to have an adverse impact on any award of costs, as it did in the case.

The applicant also alleges a violation of Article 6 of the Convention. She claims that the jury must have been prejudiced or it could not have reached such a perverse verdict, that it wrongly decided the question of the lawfulness of the applicant's arrest as it was contrary to the evidence. She also claims that the Court of Appeal denied her her rights under Article 6 as it refused a retrial, because she had to wait nearly two years for the appeal hearing (and because the Court of Appeal regarded the delay as a reason for not ordering a retrial), and because the Court of Appeal did not invite argument as to quantum, but merely made its own award.

THE LAW

1. The applicant alleges a violation of Article 5 para. 5 and Article 13 (Art. 5-5, 13) of the Convention by reason of the size of the award of compensation in her case.

Article 5 (Art. 5-5) of the Convention provides, so far as relevant, as follows.

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Commission recalls that Article 5 para. 5 (Art. 5-5) of the Convention guarantees an enforceable right to compensation of those whose detention was in contravention of one of the other provisions of Article 5 (Art. 5) (see, for example, Eur. Court HR, the Benham v. the United Kingdom judgment of 10 June 1996, to be published in Reports of Judgments 1996, para. 50). Such a finding of a contravention may be made by the domestic authorities or by the Convention organs (No. 6821/74, Huber v. Austria, Dec. 5.7.76, D.R. 6 p. 69).

In the present case, the County Court found that the detention of the applicant was unlawful from the time of the applicant's detention at 8.20 a.m. on 26 June 1989 until her release at 12.55 p.m. The Commission considers that that finding is, in substance, a finding of a violation of Article 5 para. 1 (Art. 5-1) of the Convention. Article 5 para. 5 (Art. 5-5) is therefore applicable.

The wording of Article 5 para. 5 (Art. 5-5) requires an "enforceable right to compensation". In simplistic terms, the applicant clearly had such a right, as she sought and eventually obtained damages for the wrongful detention. Moreover, in the case of Wassink, the European Court of Human Rights considered that Article 5 para. 5 (Art. 5-5) of the Convention is complied with "where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. It does not prohibit the Contracting States from making the award of compensation dependent upon the ability of the person concerned to show damage resulting from the breach" (Wassink v. the Netherlands judgment of 27 September 1990, Series A no. 185-A, p. 14, para. 38).

However, the Convention is "intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective" (Eur. Court HR, the Artico v. Italy judgment of 13 May 1980, Series A no. 37, p. 16, para. 33). The Commission agrees with the essence of the applicant's argument, which is that a right to compensation which sets levels of compensation for damage suffered so low as no longer to be "enforceable" in practical terms would not comply with the requirements of Article 5 para. 5 (Art. 5-5) of the Convention.

In the present case, the applicant sought and obtained compensation for her detention. The question is therefore whether the amount of compensation obtained was so low that the right was completely hollowed out.

The Commission accepts that in domestic terms, the amount of compensation may be low. However, an award of £350.00 for four and a half hours' detention cannot be said to be so low as to be negligible, particularly when it is borne in mind that the wording of Article 5 para. 5 (Art. 5-5) does not actually refer to specific amounts.

The Commission notes the applicant's further arguments, but does not accept that they can affect the conclusion that Article 5 para. 5 (Art. 5-5) was complied with in the present case: the effect on subsequent cases is a matter for the Commission to consider in future cases; a comparison with average awards of compensation in domestic fora is not relevant to the questions which the Commission is required to determine, and the inter-relationship between the amount of damages and the costs awarded to a successful litigant is also a matter which goes beyond the scope of Article 5 para. 5 (Art. 5-5) 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 also alleges a violation of Article 6 (Art. 6) of the Convention, both as regards the trial itself, and the proceedings before the Court of Appeal.

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 constant case-law (see eg. No. 458/59, X v. Belgium, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, X v. Sweden, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, X v. Austria, Dec. 13.12.79, D.R. 18 pp. 31, 45; No. 19890/92, Ziegler v. Switzerland, Dec. 3.5.93, D.R. 74 p. 234).

As to the remaining complaints, the Commission recalls that the Convention does not give a right to a re-trial, and there is no question of the Court of Appeal's award of damages being outside the range of possible awards a jury could have given.

As to the length of the proceedings, the Commission notes that the proceedings began with the applicant's summons in November 1991, and ended with the House of Lords refusal of leave to appeal of 19 July 1995. In that period of under four years, the County Court had a jury trial and the Court of Appeal granted the applicant's appeal in part.

The Commission considers, in the light of the criteria established by the case-law of the Convention organs on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that the length of the proceedings cannot be said to have exceeded the "reasonable time" requirement of Article 6 para. 1 (Art. 6-1) 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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO J. LIDDY

Secretary
to the First Chamber

President
of the First Chamber