AS TO THE ADMISSIBILITY OF

Application No. 27042/95
by Brian George Edward DAVIS
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 17 January 1997, the following members being present:

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

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 7 October 1994 by Brian George Edward DAVIS against the United Kingdom and registered on 18 April 1995 under file No. 27042/95;

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 1934. He is detained in Her Majesty's Prison, Long Lartin and is represented before the Commission by Mr S. Creighton, a solicitor practising in London.

A. The particular circumstances of the case

The applicant is serving a sentence of life imprisonment imposed in April 1982. He previously served a sentence of imprisonment from 1962 to 1976. The applicant has undertaken prison work during both sentences, and has received prison wages, as provided for by Rule 28 of the Prison Rules 1964. Throughout the applicant's detention, until February 1990, a sum was deducted from the applicant's gross weekly prison earnings and paid into the "General Fund", which was used to provide entertainment and other facilities for prisoners. The sum deducted was between 3 and 7 pence per week and appears on the applicant's weekly pay slip in the "debits" column. The total sum deducted from his earnings over the whole period was £67.62. After February 1990 the policy of deductions from wages to be paid into the General Fund ceased.

The applicant claims that the deduction of sums paid into the General Fund was unlawful. On 25 July 1990 the applicant petitioned the Secretary of State to authorise the return of the deducted money. On 14 September 1990 the applicant was informed that the Secretary of State had declined to authorise the reimbursement, on the grounds that the fund had been "used to provide facilities for all prisoners in the establishment".

On the 11 December 1990 the applicant applied to the High Court for leave to seek judicial review of the decision to deduct the money and of the refusal to return it. On 28 January 1991 this application was refused without a hearing.

The applicant renewed his application for leave to apply for judicial review at an oral hearing on 25 April 1991. Leave was again refused and the applicant's legal aid withdrawn. The applicant renewed his application for leave to apply for judicial review to the Court of Appeal. The applicant appeared in person on 27 November 1991, when the Court of Appeal granted him leave.

The substantive application for judicial review and for damages and/or restitution of the money deducted from the applicant's wages, was heard on 17 February 1993 and was dismissed by the High Court. On this occasion the applicant was represented by counsel. The court held, inter alia, that under Rule 28(6) of the Prison Rules, the Secretary of State was empowered to use his discretion to divert a part of prisoners wages to a fund to be used for the benefit of all prisoners.

The applicant's legal aid was again withdrawn. He appealed to the Court of Appeal against the substantive decision of the High Court. On 25 April 1994 the applicant represented himself at a contested oral hearing at which his appeal was dismissed. The Court of Appeal re-stated that it was within the Home Secretary's discretion under Rule 28(6) of the Prison Rules to make deductions from a prisoner's wages. The Court of Appeal further held that the applicant had no proprietary right to his gross earnings, rather his proprietary right was restricted to the net sum he received after deductions. The applicant applied for leave to appeal to the House of Lords, this was refused on 7 June 1994.

B. The relevant domestic law

The prison regime in England and Wales is governed by the Prison Act 1952 ("the 1952 Act") and the Prison Rules 1964 (as amended). The powers of the executive to detain prisoners, and to regulate the conditions of their detention derive from the authority of the 1952 Act. Section 47 of the 1952 Act enables the Secretary of State for the Home Department to make rules by statutory instrument. The Prison Rules 1964 were introduced pursuant to that section.

Prison Rule 28 governs work and pay. So far as relevant, it provides:

> "28. (1) A convicted prisoner shall be required to do useful work for not more than ten hours a day, and arrangements shall be made to allow prisoners to work, where possible, outside the cells and in association with one another.
>
> ...
>
> (6) Prisoners may be paid for their work at rates approved by the Secretary of State, either generally or in relation to particular cases."

As a matter of domestic law a prisoner is not recognised as being in an employer/employee relationship with either a prison governor or with the Home Office. Accordingly there is no contractual right to

payment of wages.

COMPLAINTS

The applicant alleges a violation of Article 1 Protocol No. 1 of the Convention. He alleges that his gross prison wages constituted possessions for the purposes of Article 1 Protocol No. 1 of the Convention. He complains that the deductions made were not permitted under the Prison Rules and thus amounted to an unlawful deprivation of his property in breach of Article 1 Protocol No. 1 of the Convention.

THE LAW

The applicant complains that the compulsory deduction of part of his gross prison wages amounted to a deprivation of his possessions in violation of Article 1 of Protocol No. 1 (P1-1) of the Convention.

Article 1 of Protocol No. 1 (P1-1) of the Convention provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provision shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property, in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission recalls that with regard to the concept of "possessions" under Article 1 Protocol No. 1 (P1-1) of the Convention, it is initially incumbent on an applicant to establish the precise nature of the right in domestic law to the alleged "possessions". In the present case the Court of Appeal held that the applicant did not have a proprietary right in the wages deducted from his gross pay and that his proprietary right was merely to the net wages that entered his account. Nevertheless, the concept of "possessions" is autonomous and the fact that the domestic law does not acknowledge a particular legal right, does not conclusively determine that the interest is not a possession for the purposes of Article 1 Protocol No. 1 (P1-1) of the Convention (see Eur. Court HR, Tre Traktorer Aktiebolag v. Sweden judgment of 7 July 1989, Series A no. 159 at para. 53).

The Commission is not, however, required to resolve the issue of whether the applicant's gross wages amounted to a "possession", as the application is, in any event, inadmissible for the following reasons.

The domestic courts held that the Secretary of State had a statutory basis under Prison Rule 28 (6), which enabled him to authorise compulsory deductions from prisoners' wages. The Commission notes that these deductions were made in order to supply a fund which was used to provide entertainment facilities to benefit all prisoners. The practice of deducting a few pence from each prisoners wage was long established and applied to all prisoners' wages.

In these circumstances the Commission considers that any interference with and/or deprivation of property, was in the public interest, and was subject to the conditions provided for by law.

In these circumstances the Commission concludes that the present case does not disclose any appearance of a violation of Article 1 Protocol No. 1 (P1-1) of the Convention.

It follows that this application is manifestly ill-founded within

the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber