AS TO THE ADMISSIBILITY OF

Application No. 22640/93
by Raymond HALL
against the United Kingdom

The European Commission of Human Rights sitting in private on 1 December 1993, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber,
assisted by Mrs. K. REID.

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 11 March 1993 by Raymond HALL against the United Kingdom and registered on 16 September 1993 under file No. 22640/93;

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 and resident in Southampton. The facts as submitted by the applicant may be summarised as follows.

The applicant was involved in an incident 11 March 1990 in which two men were injured. He was arrested on 19 April 1990 and charged with inflicting grievous bodily harm and assault. He was released on bail.

At his trial in February 1991, the applicant pleaded self-defence. He was convicted on 15 February 1991 on one count of grievous bodily harm and sentenced to 3 years' imprisonment.

The applicant applied for leave to appeal against conviction on 14 March 1991, alleging, inter alia, that the judge had misdirected the jury as to the defence of self-defence.

Leave to appeal was granted by a single judge of the Court of Appeal on 16 June 1991. The applicant was informed of this by letter from his solicitor of 17 July 1991 and told to contact counsel for further information. He appears to have experienced some difficulty in contacting counsel. On 14 October 1991, he contacted the Registrar of Criminal Appeals who on 25 October 1991 informed him that due to the limited availability of court time the appeal was unlikely to be heard

before Christmas.

On 18 February 1992, the Court of Appeal heard the applicant's appeal. It found that the judge's direction to the jury as to self-defence had been fundamentally wrong and that the conviction should therefore be quashed.

On 12 May 1992, the applicant applied to the Secretary of State under section 133 of the Criminal Justice Act 1988 for compensation for the period of time which he had spent, in his view, wrongfully imprisoned pending his appeal. By letter dated 27 May 1992, the Home Office stated that it would consider the application in the context of the 1988 Act and the Home Secretary's statement to the House of Commons dated 29 November 1985 concerning payment of compensation where a person has spent a period of custody as a result of serious default on the part of a public authority. The applicant's application was refused by letter dated 18 August 1992.

The applicant applied for judicial review of the Secretary of State's refusal.

Leave was refused on 29 November 1992. His renewed application was refused on 18 January 1993. The High Court judge found that the Home Secretary had not erred in his application of the statutory machinery for compensation and rejected the submissions of the applicant's counsel that the delay in the hearing of the appeal disclosed serious default on the part of a public authority.

COMPLAINTS

The applicant complains that he had to wait an unreasonable time before his appeal contrary to Article 6 para. 1 of the Convention.

He also invokes Article 5 paras. 1, 4 and 5 in relation to the delay in his appeal and the lack of compensation. He further complains under Article 3 of the degrading experience of being imprisoned.

THE LAW

1. The applicant complains of the length of proceedings in relation to his appeal against conviction.

Article 6 para. 1 (Art. 6-1), as relevant, provides in its first sentence:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by (a) ...tribunal established by law..."

Since the proceedings concerned the applicant's appeal against conviction on a criminal charge, the above provision applies.

According to the constant case-law of the Court and the Commission, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of each case and having regard in particular to the following criteria: the complexity of the case, the conduct of the applicant and that of the competent authorities (see, for example, Eur. Court H.R., Kemmache judgment of 27 November 1991, Series A no. 218, p. 27, para. 60). Persons held in detention are also entitled to special diligence (see, for example, Eur. Court H.R., Tomasi judgment of 27 August 1992, Series A no. 241-A, p. 35 para. 84).

In the present case, the period complained of is the time elapsing between conviction on 15 February 1991 and the determination of the appeal on 18 February 1992, a period of one year and three days.

The applicant did not however lodge his appeal for leave until 14 March 1991. Leave was then granted on 16 June 1991. The applicant appears to have experienced some difficulty in contacting counsel and was informed by the Registrar of Criminal Appeals that due to the limited availability of court time the appeal was unlikely to be heard before Christmas. There is therefore a period between June 1991 and February 1992, a period of 8 months, during which nothing was apparently done.

The Commission, having regard to the case as a whole however, considers that the delay that occurred is not sufficient to justify the conclusion that the total length of proceedings (i.e. 22 months for two instances) was excessive and thereby raise an issue under Article 6 (Art. 6) of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 5 paras. 1, 4 and 5 (Art. 5-1, 5-4, 5-5) of the Convention. These provide insofar as relevant:

> "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:
>
> a. the lawful detention of a person after conviction by a competent court...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 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 notes first of all that there is no indication that the applicant's detention was unlawful within the meaning of Article 5 para. 1 (Art. 5-1) of the Convention. While the Court of Appeal quashed his conviction on the basis of a misdirection of the trial judge, this does not deprive his detention of the character of "lawful" within the meaning of the Article 5 para. 1 (a) (Art. 5-1-a) of the Convention.

As regards the delay between conviction and appeal, this does not raise any issue under Article 5 para. 4 (Art. 5-4) of the Convention. That provision applies to proceedings concerning the lawfulness of detention and not to the original trial and appeal which, as concerning the determination of a "criminal charge", fall to be examined under the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission lastly notes that the applicant complains that he was unsuccessful in obtaining compensation for his period of detention and invokes Article 5 para. 5 (Art. 5-5). The right to compensation under this provision presupposes that a violation of one of the other paragraphs of Article 5 (Art. 5) has been established either by a domestic organ or by the Convention organs (see eg. No. 7950/77, Dec. 4.3.80, D.R. 19, p. 213). In the present case however, the Commission has found above that the applicant's complaints disclose no appearance of a violation of Article 5 paras. 1 and 4 (Art. 5-1, 5-4) of the Convention.

It follows that these complaints must be dismissed as manifestly

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

3. The applicant also invokes Article 3 (Art. 3) of the Convention in respect of the treatment he suffered from being detained in prison.

Article 3 (Art. 3) provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The case-law of the Convention organs establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3) of the Convention. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see, for example, Eur. Court H.R. Ireland v. the United Kingdom judgment of 18 January 1978, Series a no. 25, p. 65, para. 162).

In the present case, the applicant complains in general terms of the degrading experience of being detained in prison. He complains of no specific aspect and makes no reference to any physical or mental ill-effects. In these circumstances, the Commission finds that the applicant's experience, unpleasant though it undoubtedly was, does not disclose treatment of such a nature or degree as to render it either inhuman or degrading within the meaning of Article 3 (Art. 3) of the Convention.

It follows that this complaint must be rejected as 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) — (A. WEITZEL)