AS TO THE ADMISSIBILITY OF

Application No. 14330/88
by Joseph HARRISON
against the United Kingdom

The European Commission of Human Rights sitting in private on 13 April 1989, the following members being present:

MM. S. TRECHSEL, Acting President
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
H.G. SCHERMERS
H. DANELIUS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 27 October 1988 by Joseph HARRISON against the United Kingdom and registered on 27 October 1988 under file No. 14330/88;

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 United Kingdom citizen, born in 1946 and resident in Pulborough, Sussex.

The facts, as submitted by the applicant and which may be deduced from documents lodged with the application, may be summarised as follows:

The applicant was a horticulturalist and businessman who became involved in a cooperative which marketed salad products. The cooperative met with financial difficulties and the applicant was arrested and charged with fraud on 20 February 1981. The applicant was left with no funds, having spent any money he had on legal advice at the committal stage. He, therefore, applied for legal aid for his trial. He was informed by the Crown Court that he could have legal aid on condition that he paid £1500 into court, a sum which he did not have. The applicant requested to see the Crown Court Judge, but this was refused. No inquiry was made by the Crown Court as to the applicant's means other than that which appeared in his legal aid application. His statement of means indicated his lack of funds, save for the value of his house, which was subject to a mortgage, and was not to be taken into account in the means assessment.

The applicant was obliged to represent himself at his trial,

which ran from 17 September until 14 October 1982. He remonstrated with the trial judge who at one point suggested that the applicant had chosen of his own free will to represent himself. The applicant was convicted and sentenced to three years' imprisonment. On 10 November 1982 the Crown Court granted the applicant legal aid for counsel's advice as to an appeal. He was advised to appeal against conviction and sentence and instructed solicitors accordingly. However, they demanded £1000 from the applicant, which he could not and did not pay. They only lodged an appeal against sentence, for which the applicant received legal aid. His sentence was reduced by the Court of Appeal on 14 July 1983 to two years' imprisonment. He was released from prison on 14 October 1983.

The applicant lodged an appeal in person against his conviction. It was refused by the Single Judge of the Court of Appeal on 17 November 1983 as being out of time. However, the Full Court of Appeal granted leave and quashed the conviction on 5 July 1985. Lord Justice Watkins, giving that Court's judgment, condemned what had happened to the applicant. He commented that this was a "very disturbing" case in which the applicant's legal aid application and his circumstances should have received "careful scrutiny". As pointed out by the applicant's counsel, it was "unthinkable that an unrepresented person" in a trial of the present kind "could do himself justice", when usually only experienced counsel would have been able to master the issues. The applicant was obviously under a "grave handicap" during the 19 day hearing. He found no reasonable explanation for the Crown Court's handling of the applicant's legal aid request. It amounted to an "unfortunate catalogue of events", which, hopefully, would not be repeated. However, in these circumstances the conclusion was reached that there had not been a fair trial in the applicant's case, and his conviction was quashed.

On 30 July 1985 the applicant applied to the Secretary of State for compensation for the year of imprisonment he had served and the negligence/misconduct of the Crown Court officials and Judge in refusing him legal aid. On 3 February 1986, confirmed on 25 April 1986, the Home Secretary refused to make an exceptional ex gratia payment from public funds in this case. (English law makes no provision for an enforceable right to compensation for persons detained in custody in respect of charges on which they are subsequently acquitted, whether at trial or on appeal.) The applicant applied for judicial review of this decision. It was contended that the decision was unfair, being without reasons and based on criteria which were not divulged to the applicant, so he could not make pertinent representations.

During the course of these proceedings discovery of documents was ordered, and the Secretary of State revealed his instructions at the material time concerning the criteria for making ex gratia payments: such a payment may be made provided, inter alia, that

> "(a) on a balance of probabilities, the claimant was more likely than not to have been innocent; and
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> (b) hardship to the claimant has resulted."

A further criterion, not applicable to the present case, relating to persons who are convicted but acquitted on an appeal lodged within time, requires that there has also been some negligence or default on the part of the police or of some other public authority.

The High Court refused judicial review on 20 May 1988. It considered that the payment of compensation in question relates to a sensitive prerogative power of the Crown vested in the Secretary of State and outside the framework of statutory or common law. It held that the very nature of an "ex gratia" payment presupposes that there

is no obligation to make it. This militates against on open procedure which, to some extent, would involve a retrial of the issues before the original trial court. Confidentiality in the Home Secretary's decision making process as regards such compensation is, thus, inevitable. Accordingly he is not obliged to give reasons for his decision. Moreover, the criteria which are applied by the Home Secretary are not unreasonable and there was no evidence that they were irrationally or unlawfully applied in the present case.

COMPLAINTS

The applicant complains of a breach of Article 6 para. 1 of the Convention in respect of his unfair trial in 1982. He also complains of a breach of his defence rights under Article 6 para. 3 (b), (c), (d) and (e) in respect of the refusal of legal aid for the trial and an absence of interpreters to translate certain Italian testimony. A further breach of Article 6 para. 1 is alleged as regards a purportedly unfair determination of his civil rights by the Home Secretary in refusing the applicant's compensation claim by way of a confidential procedure.

The applicant claims to be a victim of a breach of Article 5 para. 4 of the Convention for the absence of speed in the Court of Appeal's decision to quash his conviction and the Home Secretary's determination of his compensation claim.

Finally, the applicant complains that he has been denied compensation, contrary to Articles 5 para. 5 and 13 of the Convention, for his allegedly unlawful detention following an unfair trial.

The applicant contends that he has respected Article 26 of the Convention, the final relevant decision in the case being the refusal of judicial review by the High Court on 20 May 1988. Until that time he had been exhausting all possible remedies under English law.

THE LAW

1. The applicant complains of an unfair criminal trial, a refusal of legal aid and an absence of interpretation, in breach of his rights under Article 6 paras. 1 and 3 (b), (c), (d) and (e) (Art. 6-1, 6-3-b, 6-3-c, 6-3-d, 6-3-e) of the Convention.

However, the Commission is not required to decide whether or not the facts of the present case disclose any appearance of a violation of Article 6 (Art. 6), as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". In the present case the decision of the Full Court of Appeal on 5 July 1985 was the final decision regarding these particular complaints, whereas the application was submitted on 27 October 1988, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted the running of that period. It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant next complains that he has been denied a speedy determination of the lawfulness of his detention, contrary to Article 5 para. 4 (Art. 5-4) of the Convention, because of the length of time taken by the Court of Appeal to quash his conviction in 1985 and by the Secretary of State to determine his compensation claim in 1986. In respect of this latter claim it is also contended that the Secretary of State unfairly determined the applicant's civil rights, in breach of Article 6 para. 1 (Art. 6-1) of the Convention.

However, first, for the same reasons as above, namely, non-observance of the six months' rule laid down in Article 26 (Art. 26) of the Convention,

the Commission is unable to examine the applicant's complaint concerning the Court of Appeal. This aspect of the complaint is therefore rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

Secondly, the Home Secretary's decision whether to grant compensation bears no relation to a court's determination of the lawfulness of the applicant's detention (from which he had anyway been released more than two years before). In these circumstances, Article 5 para. 4 (Art. 5-4) of the Convention has no application to the compensation proceedings. Furthermore, the Home Secretary's refusal of compensation was not a judicial determination of the applicant's civil rights or obligations (cf. No. 10406/83, Dec. 6.5.85, D.R. 42 p. 133). Hence, Article 6 para. 1 (Art. 6-1) of the Convention was also not applicable to his claim for compensation. In the light of these considerations, the Commission concludes that this part of the application is incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2).

3. Finally, the applicant complains that he has been denied compensation, contrary to Article 5 para. 5 (Art. 5-5) of the Convention, for his allegedly unlawful detention following an unfair trial. The applicant also invokes Article 13 (Art. 13) of the Convention, but the Commission does not find it necessary to examine the complaint under this provision, Article 5 para. 5 (Art. 5-5) being the lex specialis in the matter. It provides for an enforceable right to compensation for anyone who has been the victim of arrest or detention in contravention of the provisions of Article 5 (Art. 5). In the present case the relevant provision is Article 5 para. 1 (a) (Art. 5-1-a) which reads as follows:

> "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 ..."

The first question which the Commission is required to determine is whether the applicant was unlawfully deprived of his liberty, contrary to Article 5 para. 1 (Art. 5-1) of the Convention. The Commission notes that the applicant was convicted by a Crown Court on 10 November 1982 and sentenced to three years' imprisonment. He served one year's imprisonment and had his conviction ultimately quashed by the Court of Appeal because the trial was found to have been unfair due to the refusal to grant the applicant legal aid. However, the Commission finds no evidence in the case-file that the applicant's imprisonment after 10 November 1982 was not in accordance with a procedure prescribed by law or was not pursuant to a lawful conviction by a competent court, within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention. The fact that the applicant's conviction was subsequently quashed does not render it unlawful ab initio either under the relevant domestic law or under the Convention (cf. No. 9132/80, Dec. 16.12.82, D.R. 31 p. 173 para. 12). In these circumstances, in the absence of a finding of a breach of Article 5 para. 1 (Art. 5-1) of the Convention, the applicant is not entitled to compensation under Article 5 para. 5 (Art. 5-5). Accordingly 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

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission Acting President of the Commission

(H.C. KRÜGER) (S. TRECHSEL)