AS TO THE ADMISSIBILITY OF

Application No. 14778/89
by John HIGGINS
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 17 April 1991, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
H. DANELIUS
Sir Basil HALL
MM. C.L. ROZAKIS
L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
B. MARXER

Mr. M. de SALVIA, Secretary to the First 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 January 1989 by John HIGGINS against the United Kingdom and registered on 15 March 1989 under file No. 14778/89;

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 1946 and resident in Edinburgh. He is represented by Messrs. John Carroll & Company practising in Glasgow. The facts of the application may be summarised as follows.

On 29 October 1986, the applicant was convicted of three charges of contravening the Misuse of Drugs Act 1971:

1) that in the period 24 March 1986 to 4 May 1986 he had been concerned in the supply of cannabis resin at the cottage of which he was the tenant;

2) that he had been in possession of cannabis resin on 4 May 1986 at his cottage;

3) that he had been in possession of cannabis resin at the cottage on that day with intent to supply it to another.

On 12 November 1986, he was sentenced to two years' imprisonment by the Edinburgh High Court.

The applicant appealed. In an opinion dated 27 April 1988, counsel advised that an appeal against conviction would be likely to succeed since the applicant had been convicted of three charges based on identical facts ("triple jeopardy"). Since however the applicant's sentence had expired in September 1987, he advised from a practical point of view that there was little point of proceeding and such an appeal did not merit the employment of counsel.

On 21 May 1988, the Legal Aid Board refused the applicant legal aid for his appeal.

The applicant's solicitor had informed the Legal Aid Board that the applicant had already appeared before the High Court of Justiciary, which had adjourned the appeal so that the applicant could try to secure legal representation and that the quashing of the conviction was of relevance since, meanwhile, the applicant had been sentenced to five years' imprisonment by Lord Brand who, in determining the sentence, took into account the earlier conviction but for which he stated he would have been disposed to be lenient. Quashing the earlier conviction might therefore have supported an appeal against the sentence of five years in respect of the subsequent charge.

The Legal Aid Board reviewed its decision but informed the applicant's solicitor by letter dated 14 June 1988 that it maintained its decision.

The High Court had adjourned appeal hearing on five occasions (30 April 1987, 19 June 1987, 6 November 1987, 19 February 1988 and 30 June 1988) in response to the applicant's applications.

On 12 November 1988, the High Court of Justiciary heard the applicant's appeal. The applicant presented his appeal in person and the Advocate Depute appeared for the Crown. The applicant had two main grounds of appeal, namely, that there was not sufficient evidence indicating that he had control of the cannabis resin and that in relation to the first and third counts the Sheriff had rehearsed to the jury precisely the same evidence and that accordingly he had wrongly been found guilty of more than one offence arising out of the same facts. The High Court of Justiciary dismissed the applicant's appeal. It found that there was sufficient evidence, based on the applicant's behaviour, indicating that he had control of the cannabis. It also found that while the second ground of appeal had a certain initial attraction, it was legitimate for the jury to look at one piece of evidence (a large sum of money found at the scene) in relation to the two charges, since it had a different significance to each charge, i.e. the presence of the money threw light on the character of the applicant's possession of the cannabis and the sheer size of the amount threw a significant light on the applicant's past conduct.

COMPLAINTS

The applicant complains of the refusal of legal aid for representation at his appeal on 12 November 1988. He submits that his appeal had good prospects of success but that, without legal aid, he was unable properly to present his case. He complains that the trial did not respect the principle of equality of arms since the Advocate Depute presented the case for the prosecution. He invokes Article 6 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 14 January 1989 and registered on 15 March 1989. On 4 December 1989, the Commission decided to adjourn the case pending the judgment of the European Court of Human Rights in the Granger case. The Court delivered judgment in that case on 28 March 1990 (Eur. Court H.R., Granger judgment, Series A No. 174).

On 17 May 1990, the Commission decided to give the United Kingdom Government notice of the application and to invite them to submit observations on the admissibility and merits of the application.

The Government submitted its response on 9 November 1990 and

the applicant replied on 23 November 1990.

On 14 December 1990, the Commission decided to grant the applicant legal aid.

On 9 April 1991 the Commission decided to transfer the case to the First Chamber.

THE LAW

The applicant complains that he was refused legal aid for his appeal against conviction contrary to the interests of justice. He invokes Article 6 (Art. 6) of the Convention which provides, inter alia:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
...
3. Everyone charged with a criminal offence has the following minimum rights:
...
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

The Commission notes that the Government have made no observations as to admissibility, while reserving their position on the merits.

The Commission has made a preliminary examination of the present applicant's complaints under Article 6 paras. 1 and 3 (c) (Art. 6-1, 6-3-c) of the Convention (cf. Eur. Court H.R., Granger judgment of 28 march 1990, Series A No. 174). It considers that they raise serious issues of fact and law which are of such complexity that their determination should depend on a full examination of the merits. It follows that the application cannot be declared manifestly ill-founded and must be declared admissible, no other ground for declaring it inadmissible having been established.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Secretary to the First Chamber — President of the First Chamber

(M. DE SALVIA) — (J.A. FROWEIN)