AS TO THE ADMISSIBILITY OF

Application No. 16709/90
by Steven HOPKINS
against the United Kingdom

The European Commission of Human Rights sitting in private on 7 January 1991, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Sir Basil HALL
Mr. F. MARTINEZ RUIZ
Mrs. J. LIDDY
MM. J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 24 May 1990 by Steven HOPKINS against the United Kingdom and registered on 13 June 1990 under file No. 16709/90;

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 1960 and resident in Sheffield. He is represented by Madeleine Colvin of the National Council for Civil Liberties. The facts as submitted by the applicant may be summarised as follows.

The applicant applied for a post in the Civil Service and by letter of 28 April 1988 was informed that he had been assigned to the Welsh Office. Following his application to join the Foreign and Commonwealth Office (the FCO) he was informed that before an appointment was made, enquiries would need to be made (i.e. "positive vetting"). By a letter of 31 August 1988, the FCO asked the applicant to attend a training course before his conditional appointment to a post. On 13 September 1988 during the course, the applicant was informed that a problem had arisen with his security clearance and he was required to attend an interview with the FCO security investigating unit. Following the interview on 4 October 1988, the applicant was informed that his post in the Diplomatic Service was not to be confirmed in light of the enquiries made during the positive vetting procedure. He was not given further details.

In December 1988, the applicant was informed by the Civil Service Commission that the assignment mentioned in its letter of

28 April 1988 had to be withdrawn following his rejection by the FCO. No other reasons were given.

On 1 March 1989, the applicant instituted proceedings in the High Court seeking judicial review of the decision not to appoint him. On 19 May 1989, the Civil Service Commission served an affidavit stating inter alia that they were under no duty to give reasons. In an opinion dated 25 August 1989, counsel advised that it would be impossible to challenge their argument. The applicant applied to withdraw the action and on 11 January 1990 the High Court made an order ending the proceedings.

COMPLAINTS

The applicant complains of the obtaining, retention and application of personal information about the applicant (beyond that provided by himself) through the positive vetting procedures so as adversely to affect his prospects of being appointed to the relevant job, without any opportunity for him to know the nature and extent of the procedures to be adopted in that exercise or to comment on the accuracy of the information and submits that this constitutes a breach of his right to respect for private life under Article 8 para. 1 of the Convention.

The applicant submits that the obtaining, retention and application of personal information about the applicant (beyond that provided by himself) through the positive vetting procedures carried out by the security investigation unit of the Foreign and Commonwealth Office is not 'in accordance with the law'. Contrary to the principles stated in the MALONE case (Eur. Court H.R., Malone judgment of 2 August 1984, Series A no. 82, p. 31-33, paras. 66-68), the relevant law (if any) is not adequately accessible or formulated with sufficient precision. The Security Service Act 1989 relates only to the activities of the security service known as MI5 and does not include the security activities of any other Government Department.

Further, the applicant was not informed in sufficient detail of the nature and extent of the positive vetting procedures or given the opportunity to comment on the accuracy or the information obtained, retained and applied during the positive vetting exercise. There were thus no safeguards applied to ensure that the 'procedures' operated fairly and effectively.

The applicant also submits that he has no effective remedy before a national authority in respect of the matters of which he complains, contrary to Article 13 of the Convention. Although the Security Service Act 1989 introduces the Security Service Tribunal to which individuals can complain in relation to the activities of the security service known as MI5, it fails to provide an 'effective remedy' since it only applies to MI5 and to acts done by MI5 on or after 18 December 1989.

THE LAW

The applicant complains of the obtaining, retention and application of information about himself through the positive vetting procedure carried out by the FCO. He invokes Articles 8 (Art. 8) and 13 (Art. 13) of the Convention.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law and within a period of six months from the date on which the final decision was taken".

The Commission recalls that the applicant instituted judicial review proceedings in respect of his complaints and that he subsequently withdrew these proceedings. In these circumstances, the Commission has considered whether the applicant can be said to have exhausted the domestic remedies available to him. The applicant has submitted that it became apparent following the service of the Civil Service Commission's affidavit on 19 May 1989 that he stood no prospect of success and that he was advised of this by counsel's opinion. The Commission's case-law establishes that only remedies which are "effective and sufficient" can be considered in the context of Article 25 (Art. 25) of the Convention (see e.g. No. 654/59, Dec. 3.6.60, Yearbook 4 pp. 155, 187). Even assuming therefore that the judicial review proceedings did not constitute an effective remedy which the applicant was obliged to exhaust, the Commission must determine whether the applicant has introduced his complaints within six months from the date on which the final decision was taken. In these circumstances, the six month time-limit cannot be considered as starting to run later than the moment when the applicant became aware that the judicial review proceedings did not constitute an effective remedy for his complaints, i.e. when he received notice of counsel's opinion. This opinion was dated 25 August 1989 whereas the application was submitted to the Commission on 24 May 1990, that is, more than six months after this date.

It follows that the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

The Secretary to the Commission — The President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)