AS TO THE ADMISSIBILITY OF

Application No. 22393/93
by Jack ISAACS
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.

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 February 1993 by Jack ISAACS against the United Kingdom and registered on 29 July 1993 under file No. 22393/93;

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 1946 and resident in London. The facts as submitted by the applicant may be summarised as follows.

On 1 April 1991, the applicant took up employment as a warder at the National Army Museum.

On 15 November 1992, a robbery took place at the museum in which his employers suspected that he was implicated. The applicant was questioned by the police but no charges were ever brought.

The applicant was suspended from his duties on 26 November 1992. Following a disciplinary hearing on 12 January 1993, the applicant was dismissed. He was informed that the ground for the dismissal was that in light of information received from the police and the museum's own investigation he was found to be implicated in the robbery, which amounted to gross misconduct and a fundamental breach of his contract of employment.

The applicant believed that the real reason for his dismissal was his activity as officer of a trade union NUCPS. An opinion dated 17 March 1993 by counsel gave the view however that there was no evidence to support such a claim under section 153 of the Trades Union (Law Reform) Act 1992 which would be highly unlikely to succeed. He was also informed that since he had been employed for less than 2 years he

would be unable pursuant to the provisions of the Employment Protection (Consolidation) Act to bring proceedings for unfair dismissal on other grounds.

COMPLAINTS

The applicant complains of being dismissed by means of an allegation of a criminal charge in which process his employers refused to supply him with documents or witnesses and by which he was found guilty without due process of law. It also resulted in the loss of his job and has affected his future employment prospects.

The applicant invokes Article 6 paras. 2 and 3 (d) of the Convention.

THE LAW

1. The applicant complains that he was deprived of the presumption of innocence and the opportunity to examine witnesses or evidence relating to the accusation against him in the dismissal procedure.

Article 6 (Art. 6) of the Convention provides, as relevant, in this case:

> "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....
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

The Commission recalls that the applicant was dismissed by his employer for gross misconduct and fundamental breach of contract, following a disciplinary hearing, on the basis that it was considered that he was implicated in a robbery. The Commission considers that dismissal for suspicion of criminal offences by a state employer does not involve the determination of a criminal charge and is not against the principle of the presumption of innocence, the matter relating to the employment and contractual sphere and not to the context of actual criminal proceedings (No. 11882/85, Dec. 7.10.87, D.R. 54 p.162).

The Commission concludes that these complaints do not fall within the scope of Article 6 para. 1 (Art. 6-1) of the Convention. It follows that they are incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Insofar as it is implicit in the applicant's complaints that he was unable to challenge his dismissal, the Commission has examined whether he has been denied access to court in relation to the determination of any civil rights or obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see above).

The Commission recalls that the applicant considered that his dismissal was in fact motivated by his employer's disapproval of his

trade union activities. In this respect, the applicant could under the applicable legislation have instituted proceedings before the Industrial Tribunal. While counsel was of the opinion that a claim was not likely to succeed for reasons of lack of evidence, this cannot be considered as thereby depriving him of access to court.

The Commission further notes that the applicant was unable to institute proceedings before the Industrial Tribunal alleging that his dismissal was unfair for any other reason since the provisions of the Employment Protection (Consolidation) Act 1978 which afford a right not to be unfairly dismissed only apply to be persons who have been employed for a period exceeding 2 years. The Commission recalls however that Article 6 para. 1 (Art. 6-1) cannot be interpreted as imposing requirements as to the content of the substantive law of Contracting States (see eg. Eur. Court H.R. Lithgow and others judgment of 8 July 1986, Series A no. 102, p. 70 para. 192). In particular it cannot be construed as providing employment rights where the domestic law does not do so (see eg. No. 15084/89, Dec. 2.10.89, unpublished). In these circumstances, the Commission finds that the applicant did not enjoy a "civil right" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this aspect of the application is incompatible ratione materiae also with the provisions of the Convention 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.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)