Application No. 20184/92
by Stephen JOSEPH
against the United Kingdom

The European Commission of Human Rights sitting in private on 30 August 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J. C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J. C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV

D. ŠVÁBY

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 March 1992 by Stephen JOSEPH against the United Kingdom and registered on 18 June 1992 under file No. 20184/92;

Having regard to :

reports provided for in Rule 47 of the Rules of Procedure of the Commission;

the observations submitted by the respondent Government on 10 February 1994 and the observations in reply submitted by the applicant on 29 March 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1940. He is represented in the proceedings before the Commission by Messrs. J. Hollyer Wilson & Page, solicitors, practising in Ilford.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. The particular facts of the case

On 19 May 1990 the applicant was stopped by the police and charged with the following traffic offences: not producing a driving licence, using an uninsured motor vehicle, failing to produce an insurance certificate and speeding.

Pursuant to an information laid by the police, summonses were issued, and sent by registered post, for the applicant to attend the local Magistrates' Court on 22 November 1990. The summonses were returned to the court marked "Not call for" (sic).

The summonses were re-issued for hearing on 6 June 1991. This time, a process server went to the applicant's address. He returned the summonses marked "Does not reside, no trace". On 6 June the case was adjourned to enable the police constable involved in the case to lay an information for an arrest warrant to be issued.

On 26 July 1991 the police constable in the case attended and laid an information on oath for a warrant of arrest against the applicant. The application was granted. The police

constable gave evidence on oath concerning his suspicion of the applicant's having committed the offences. The process server was not present.

On 11 November 1991 the applicant was arrested and detained by the local police. In correspondence with the Commission the applicant refers to his detention as lasting "two hours" (his representative's letter of 19 May 1992) and "about 10 to 11 hours" (his representative's letter of 9 November 1992) and "10 - 11 hours" (his observations in reply to the Government's observations). The Government state that the police custody record shows that the applicant arrived at the police station at 1.30 p.m. on 11 November, was charged and bailed, and released at 2.10 p.m..

On 20 November 1991 the applicant attended court on the warrant. He pleaded guilty to the offence of speeding and pleaded not guilty to the remainder of the charges. He was remanded on unconditional bail to 18 December 1991.

The applicant states that whilst on remand he suffered a stomach upset which he alleged was due to the extreme stress he was subjected to. This stomach upset continued and made him unable to work for three weeks, causing him a loss of £3,500 income, being a self-employed carpenter.

On 18 December 1991 the Court imposed a fine of £75 and costs for the offence of speeding. His driving licence was endorsed. No evidence was offered in respect of the remaining charges, which were dismissed.

B. The relevant domestic law and practice

The procedure in the Magistrates' Courts is governed by the Magistrates' Courts Act 1980 ("the 1980 Act").

Under Section 1 of the 1980 Act a justice can issue a warrant to bring an offender before him only if there is an information before him in writing and substantiated on oath (Section 1(3)). The power to issue a warrant in the case of non-imprisonable offences (as in the present case) is limited by Section 1(4) which reads as follows:

"No warrant shall be issued under this section for the arrest of any person ... unless -

(a) ...

(b) the person's address is not sufficiently established for a summons to be served on him."

Section 45 of the Justices of the Peace Act 1979 as amended by Section 108 of the Courts and Legal Services Act 1990 reads as follows:

"An action shall lie against any justice of the peace or justice's clerk in respect of any act or omission of his -

(a) in the purported execution of his duty -

(i) as such a justice; or

(ii) as such a clerk exercising, by virtue of any statutory provision, any of the functions of a single justice; but

(b) with respect to a matter which is not within his jurisdiction, if, but only if, it is proved that he acted in bad faith."

Section 98 of the 1980 Act provides as follows:

"Subject to the provisions of any enactment or rule of law authorising the reception of unsworn evidence, evidence given before a magistrates' court shall be given on oath."

COMPLAINTS

The applicant complains under Article 5 para. 1 (b) and (c) of the Convention about his unlawful arrest.

Under Article 5 para. 5 of the Convention he complains about the lack of an enforceable right to compensation regarding his losses allegedly caused by his arrest.

Finally, under Article 13 of the Convention the applicant complains about the lack of an effective remedy under British law concerning his above complaints.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 March 1992 and registered on 18 June 1992.

On 30 August 1993 the Commission decided to request the parties to submit written observations on the admissibility and merits of the application.

The respondent Government submitted their observations on 10 February 1994 and the applicant submitted his observations in reply on 29 March 1994.

The Commission granted legal aid to the applicant on 11 March 1994.

THE LAW

1. The applicant alleges violation of Article 5 para. 1 of the Convention. Article 5 para. 1 of the Convention provides, so far as relevant, 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:

...

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ..."

The applicant points out that the magistrates only had power to issue an arrest warrant if his address was not sufficiently established for a summons to be served on him, under Section 1(4)b of the 1980 Act. He considers that this provision includes a requirement that the evidence as to his address was to be given under oath. As it was not, he sees the warrant as fundamentally flawed with the result that his subsequent detention was not "lawful" within the meaning of Article 5 of the Convention.

The Government state that there exists in domestic law no requirement that evidence as to whether a person's address has been sufficiently established must be made on oath. They point out that the magistrates had before them the initial summonses which had not been called for, and also the summonses which the process server attempted to serve personally. They consider that it was reasonable for the magistrates to draw the inference that the applicant's address was not sufficiently established for a summons to be served on him. They add that the words "not sufficiently established" mean that some doubt exists; they do not require the court to be entirely certain that the defendant's whereabouts are unknown.

The applicant's entire case rests on the proposition that the requirements of domestic law regarding the issue of an arrest warrant in this case were not complied with.

The Commission first notes that neither the Magistrates' Court Act 1980 nor the Magistrates' Court Rules 1981 contain any specific provision for the way in which magistrates are to satisfy themselves as to whether a person's address has been sufficiently established before an arrest warrant can be made. The applicant repeatedly affirms that there is a requirement that the magistrates take evidence on oath, but has not submitted any authority for his statement.

The applicant does, it is true, refer to Rule 98 of the Magistrates' Court Rules 1980. This must be intended to be a reference to Section 98 of the Magistrates' Court Act 1980, as there are no Magistrates' Court Rules 1980, and Rule 98 of the Magistrates' Court Rules 1981 relates to the form a summons must take. It does not refer to evidence under oath at all. The Commission notes that Section 98 of the 1980 Act sets up the principle, subject to exceptions, that "evidence given before a magistrates' court shall be given on oath". The issue of an arrest warrant by magistrates does not, however, involve evidence before a magistrates court, but involves the exercise of specific statutory authority granted by Section 1 of the 1980 Act. The applicant has not been able to point to a single case in which the courts have found that evidence as to inability sufficiently to establish a person's address must be on oath.

The Commission accepts in these circumstances the Government's contention that evidence as to an individual's address need not be given on oath: the information which is laid as to the offence must be on oath by virtue of Section 1(3) of the 1980 Act (and was on oath in the present case), but nowhere is mentioned a requirement that the question of whether a person's address is sufficiently established must also be addressed under oath. It is a matter which the magistrate must determine.

The Commission finds that the applicant's detention was "in accordance with a procedure prescribed by law" within the meaning of the first paragraph of Article 5 para. 1 of the Convention, and was "lawful" within the meaning of Article 5 para. 1(c) of the Convention, in the sense that it was not in contravention of domestic law. The Commission therefore also finds that his arrest and detention were effected in compliance with the requirements of Article 5 para. 1(c) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant also alleges a violation of Article 5 para. 5 and Article 13 of the Convention.

The Commission recalls that a violation of Article 5 para. 5 of the Convention depends on the existence of a violation of one of the other provisions of Article 5, and that a violation of Article 13 of the Convention requires that an individual's substantive claim must be an "arguable" one (cf. eg. No. 10371/83, Dec. 6.3.85, D.R. 42 p. 127, and Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 54, respectively).

In the light of its above conclusion as to the applicant's complaints under Article 5 para. 1 of the Convention, the Commission finds that Article 5 para. 5 is not applicable in this case. It also finds that the claim under Article 5 para. 1 is not "arguable" within the meaning of that term ascribed to it by the Convention organs. Accordingly, no remedy is required under Article 13 of the Convention.

It follows that the remainder of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRUGER) (C.A. NORGAARD)