AS TO THE ADMISSIBILITY OF

Application No. 12656/87
by K.
against the United Kingdom

The European Commission of Human Rights sitting in private on 13 May 1988, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN,
S. TRECHSEL,
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

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 1 August 1986 by K. against the United Kingdom and registered on 19 January 1987 under file No. 12656/87;

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 citizen of France, born in 1949 and an artist by profession. At the time of lodging his application he was detained in HM Prison Edinburgh where he was serving a 30 month prison sentence for assault with intent to rape.

The applicant claims that he is innocent of the offence and outlines the evidence in his favour. He states that on the day of his trial, 21 November 1985, the QC (senior counsel) with whom he had prepared his defence was unable to be present and junior counsel had allegedly under an hour to prepare the defence file. The applicant had wanted an adjournment so that the original QC could represent him, but he was allegedly threatened by the Procurator Fiscal with remand in custody if such an application were made to the court and accepted, so the request for an adjournment was not made. Junior counsel

allegedly failed to call essential defence witnesses who were present in court. The Edinburgh High Court convicted him of the offence.

The Dean of the Faculty of Advocates, in a letter to the applicant dated 10 July 1987, refuted the applicant's allegations. Junior counsel had been instructed in good time before the trial and had adequate time to prepare the brief. His counsel's recollection is that the applicant was not happy about the unavailability of senior counsel, but he accepted the explanation given. The Dean considered that counsel had quite rightly not called certain witnesses whose evidence was anyway accepted by the prosecution or witnesses who would have been prejudicial to the defence. The evidence given by the main prosecution witnesses was strong and there was ample evidence for a conviction.

On appeal the applicant wished to raise the question of an inadequate defence because of counsel's alleged inability to prepare the brief in time. However, the original written grounds of appeal which were lodged by the applicant's solicitor omitted this point and relied on an alleged misdirection by the judge. The applicant did not receive legal aid for representation at the appeal hearing. He was, however, assisted by his solicitor in the preparation of the appeal. The solicitor attended the hearing, albeit not as his formal representative, and subsequently waived his fees. The applicant represented himself at the appeal hearing and raised the question of the change of counsel at the trial as a violation of Article 6 para. 3 of the Convention by the trial court. The applicant claims not to have received the free services of an interpreter before the High Court of Justiciary on appeal, the interpreter provided by the French Consul allegedly not being a professional.

The High Court of Justiciary found no misdirection of the case by the trial judge and considered the applicant's conviction inevitable and well-founded. It made no comment on the conduct of the applicant's defence at the trial or the absence of evidence from certain witnesses. The Court dismissed the applicant's appeal on 25 September 1986.

Finally, the applicant states that the prison authorities refused him permission to be visited and filmed by a Scottish Television journalist who was investigating his case. On 5 March 1987 the Scottish Home and Health Department confirmed the refusal because the exhibition of particular prisoners on television is prohibited by Prison Standing Orders.

COMPLAINTS

The applicant complains to the Commission of a breach of Article 6 para. 3 (a), (b), (c) and (d) of the Convention insofar as he was not represented by the senior counsel of his choice at his trial, insofar as junior counsel was allegedly ill-prepared to defend him having been instructed only an hour before the hearing, insofar as the trial allegedly had to proceed because of the Procurator Fiscal's threat to imprison him, insofar as junior counsel failed to produce certain defence witnesses and material, and insofar as the appeal court did not provide an interpreter and he was not legally represented at the appeal hearing.

In correspondence with the Commission the applicant also complained of a breach of Article 10 of the Convention insofar as the prison authorities refused to allow him to be visited and filmed by a Scottish Television journalist.

THE LAW

1. The applicant has complained of a breach of his rights of defence ensured by Article 6 para. 3 (Art. 6-3) of the Convention, which reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (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;
>
> (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;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

However the Commission finds no evidence in the case file to substantiate the applicant's allegations. There is no evidence whatsoever that the applicant was not informed promptly or comprehensively of the charges against him. Nor is there evidence in the case-file that the Procurator Fiscal threatened the applicant with remand in custody if he sought an adjournment of his trial.

The Commission considers that the mere fact that senior counsel of the applicant's choice was unable to represent him at the trial does not indicate that junior counsel did not have the time, facilities or ability to represent the applicant adequately. There is no evidence that junior counsel failed to master the brief or failed to call essential witnesses or put in essential evidence. The appeal court made no comment on junior counsel's representation of the applicant at the trial or on the absence of certain witnesses' evidence. In this latter connection the Commission notes that Article 6 para. 3 (d) (Art. 6-3-d) of the Convention does not confer on the accused an absolute right to obtain the appearance of all possible witnesses in court. The accused must demonstrate that the hearing of a particular witness "was necessary for ascertaining the truth and that failure to hear the witness prejudiced the rights of defence" (No. 9000/80, Dec. 11.3.82, D.R. 28 p. 127). The applicant has not demonstrated that the evidence of the witnesses which junior counsel did not call and upon which the appeal court did not apparently see fit to comment were essential to the truth of his case.

Finally, the Commission notes that the applicant had extensive free legal assistance for his appeal, albeit not a formally designated representative, and that he had the free assistance of an interpreter provided by the French Consul. He has submitted no evidence that the interpreter was incompetent.

In these circumstances, the Commission concludes that the applicant's complaints under Article 6 para. 3 (Art. 6-3) of the Convention are manifestly ill-founded within the meaning of Article 27 para. 2 (Art.27-2) of the Convention.

2. The applicant has also complained of the refusal of the prison authorities to allow him to be visited and filmed by a Scottish Television journalist. He invokes Article 10 (Art. 10) of the

Convention the relevant part of which provides as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibiities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the prevention of disorder or crime..."

The Commission assumes, for the purposes of the present case, that the refusal to allow the applicant to give a televised interview constituted an interference with his freedom to impart information, ensured by Article 10 para. 1 (Art. 10-1) of the Convention. The Commission notes the general prohibition in Scottish Prison Standing Orders on the "exhibition of particular prisoners on television". The Scottish Prison Rules only authorise prisoners' visits from relatives and friends, legal advisers, procurator fiscal or police officers. Permission for all other visits is at the discretion of the Secretary of State (Rules 74-80 Prison (Scotland) Rules 1952). The Commission acknowledges that the provision of general facilities for such interviews would create an unreasonable administrative and security burden for prison administrations. Thus, the prohibition of visits for television interviews can be said to be prescribed by law and, in principle, necessary in a democratic society for the prevention of disorder, within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention. The Commission also observes that there is no evidence in the present case that the applicant was prevented from communicating with the journalist concerned by correspondence, thus imparting relevant information about his case. Nor does the application disclose any exceptional circumstances which might have necessitated the televising of the applicant.

In the light of these considerations the Commission concludes that the refusal to allow the applicant to be visited and filmed by a Scottish Television journalist was prescribed by law and necessary in a democratic society for the prevention of disorder within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

It follows that this aspect of the case is also manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)