AS TO THE ADMISSIBILITY OF

Application No. 13352/87
by Maurice John KIRK
against the United Kingdom

Application No. 13496/88
by Maurice John KIRK
against the United Kingdom

Application No. 13584/88
by Maurice John KIRK
against the United Kingdom

The European Commission of Human Rights sitting in private on 8 March 1989, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
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. L. LOUCAIDES

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 28 October 1987 by John KIRK against the United Kingdom and registered on 12 January 1988 under file No. 13352/87,

- the application introduced on 3 December 1985 by John KIRK against the United Kingdom and registered on 12 January 1988 under file No. 13496/88,

- the application introduced on 29 September 1987 by John KIRK against the United Kingdom and registered on 3 February 1988 under file No. 13584/88;

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 British citizen born in 1945 and resident in Guernsey. The facts as submitted by the applicant may be summarised as follows.

- I -

The applicant complains of his arrest on charges of dangerous and drunken driving on 9 August 1983 and the subsequent proceedings against him in which he contends irregularities occurred, including perjury by witnesses for the prosecution whom he was prevented from fully cross-examining. He also complains of difficulties in subpoenaing witnesses and preparing his case. He was convicted on 23 January 1984 and sentenced to a fine of £125 with his driving licence suspended for three years. He also complains that he was detained on remand for various unspecified periods between August 1983 and his appearance before the Royal Court on 15 November 1984. The applicant refers to the dismissal of an appeal on 22 January 1985 by the Royal Court and the decisions of the Court of Appeal (Guernsey) on 11 July 1985 and of the Privy Council on 22 October 1985, both of which appeals were dismissed.

The applicant invokes Articles 1, 3, 5, 6, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

- II -

While in a magistrates court on 12 December 1983 facing drunk-driving charges, the applicant, who considered that the Acting Magistrate was behaving unlawfully, left the dock with the expressed intention of placing the magistrate under citizen's arrest. He was stopped by police officers as he approached the magistrate and a scuffle ensued, resulting in the applicant being handcuffed and placed in the court cells.

The applicant was summoned to court in March 1984 and was committed on a charge of contempt of court. Following several hearings, during one of which he appeared handcuffed, he was sentenced to 8 months' imprisonment on 17 July 1984. His appeal to the Court of Appeal was dismissed on 5 October 1984 and his application for special leave to appeal to the Privy Council dismissed in October 1985. The applicant was represented by a local lawyer at his trial but appeared in person at his appeal. It appears from a transcript of the proceedings before the Court that he preferred to be represented by a lawyer from England but since that was not possible, he chose to represent himself rather than use his trial lawyer.

The applicant complains, inter alia, of being handcuffed and thrown in a cell, of being illegally detained, of the delay between the incident and the summons to court, of being refused facilities for defence and of being refused legal assistance. He also complains of being handcuffed before the Court on one occasion and that the trial judge was not impartial.

He invokes Articles 1, 3, 5, 6 paras. 1 and 3 (a), (b), (c) and (d), 8 and 14 of the Convention and Article 1 of Protocol No. 1.

- III -

The applicant was detained in prison between 19 June and 31 December 1984. He alleges that during this period many of his letters relating to his civil actions in debt and partnership and to contempt of court proceedings were stopped, delayed or diverted to the Procureur or the President of the Housing Authority and Prison Board.

On 8 November 1984, the Governor of the Prison supplied the applicant with a list of 35 stopped letters, which included letters to the Press, M.P.s, N.C.C.L. (National Council for Civil Liberties) and various politicians.

The applicant's complaints came to the attention of the Home

Secretary via an M.P. By letter dated 11 December 1984, the Home Office replied:

> "As regards the censoring of his mail, I understand that Mr. Kirk has been permitted to send over a thousand letters whilst in prison. This is far in excess of the statutory entitlement. Only one incoming letter (from a mentally ill patient) and 32 outgoing letters have been stopped. Those he was prevented from sending were mostly of an excessive length and contained numbers of photocopies of cartoons and press cuttings and other material not relevant to his appeals or litigation proceedings. He has been allowed to pass confidential written instructions to his Island legal advisers and could have passed instructions through them to his UK solicitors had he so wished, provided that the instructions related to his status as an appellant."

The applicant later complained of these matters to the Ombuds Committee by letter dated 23 March 1987 and was informed by letter dated 14 December 1987 that following enquiry, the States Supervisor had found that letters had been stopped by the Prison Governor under Section 67 (4) of the Prison Administration (Guernsey) Ordinance 1959 and that all such letters had been returned to the applicant. By letter dated 4 January 1988, the States Supervisor further specified that on 3 September 1984, 30 letters had been stopped (2 of which were later sent) and on 5 September 1984, a further 7 letters had been stopped. The applicant refused to accept this information, alleging that numerous letters were still in the possession of the prison. During proceedings brought against the applicant by his legal advisers for non-payment of fees, the applicant alleged that the evidence revealed 15 letters to his advocate had been sent by him from the prison but not received, though it is unclear whether he alleges that the prison stopped them or whether his advocate lied about not receiving them.

He invokes Articles 6 paras. 1 and 3 (b), (c) and (d), 8 and 14 of the Convention and Article 1 of Protocol No. 1.

COMPLAINTS

The applicant complains, inter alia, of being illegally deprived of his liberty and of not receiving a fair trial in relation to his conviction for dangerous driving and contempt of court. He complains of a lack of impartiality in the courts and of being refused facilities for his defence and of being refused legal assistance.

The applicant complains that the stopping of letters deprived him of adequate time and facilities for the preparation of his defence, prevented him from defending himself with legal assistance of his own choosing and from examining witnesses.

He also complains that the interference with his mail relating to his civil actions caused delays.

The applicant invokes Articles 1, 3, 5, 6 paras. 1 and 3 (a), (b), (c) and (d), 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

1. The applicant has complained of his arrest and conviction for dangerous driving and of irregularities and shortcomings in the proceeding. He invokes Articles 1, 3, 5, 6, 8, 13 and 14 (Art. 1, 3, 6, 8, 13, 14) of the Convention and Article 1 of Protocol No. 1 (P1-1).

However, the Commission is not required to decide whether or

not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the decision of the Privy Council, which was the final decision regarding the subject of these particular complaints, was given on 22 October 1985, whereas the application concerning these complaints (No. 13352/87) was submitted to the Commission on 28 October 1987, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

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

2. The applicant has also made numerous complaints arising out of his conviction for contempt of court on 17 July 1984. He invokes Articles 1, 3, 5, 6 paras. 3 (a), (b), (c) and (d), 8 and 14 (1, 3, 5, 6-3-a, 6-3-b, 6-3-c, 6-3-d, 8, 14) of the Convention and Article 1 of Protocol No. 1 (P1-1).

The Commission has examined the applicant's complaints as they have been submitted by him. Insofar as the applicant complains of being refused legal assistance and of being denied facilities for his defence, the Commission notes that the applicant was represented at his trial and that he appeared in person at his appeal at his own choice. The Commission further finds that the applicant's remaining complaints have not been substantiated and that they fail to disclose any appearance of a violation of the provisions invoked by the applicant.

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

3. The applicant has complained that his correspondence while in prison from 19 June to 31 December 1984 was censored and stopped. He invokes Articles 6 paras. 1 and 3 (b), (c) and (d), 8 and 14 (6-1, 6-3-b, 6-3-c, 6-3-d, 8, 14) of the Convention and Article 1 of Protocol No. 1 (P1-1).

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". According to the Commission's established case-law the "final decision" within the meaning of Article 26 (Art. 26) refers solely to the final decision involved in the exhaustion of all domestic remedies according to the generally recognised rules of international law. In particular, only a remedy which is "effective and sufficient" can be considered for this purpose (see e.g. No. 654/59, Dec. 3.6.60, Yearbook 4 pp. 276, 282; No. 9266/81, Dec. 28.1.83, D.R. 30 pp. 155, 187).

The Commission finds that, in the present case, the applicant's complaint to the Ombuds Committee was not an effective remedy under the generally recognised rules of international law. Consequently, the decisions by that Committee regarding this complaint cannot be taken into consideration in determining the date of the final decision for the purpose of Article 26 (Art. 26).

The final decision regarding the applicant's complaints is accordingly the decision of the Home Office which was given in a letter dated 11 December 1984 whereas the relevant application (No. 13584/88) was submitted to the Commission on 29 September 1987, that is, more than six months after the date of this decision. Furthermore,

an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the applications 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

DECLARES THE APPLICATIONS INADMISSIBLE.

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