AS TO THE ADMISSIBILITY OF

Application No. 28155/95
by Parmod KUMAR
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION

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 28 July 1995 by Parmod KUMAR against the United Kingdom and registered on 7 August 1995 under file No. 28155/95;

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 an Indian national born in 1945 and residing in New Delhi. Before the Commission he is represented by Elaine Needham, a solicitor practising in London.

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

Particular circumstances of the case

At the time of the events at issue the applicant resided in the United Kingdom.

On 26 August 1990 a Ms. B. complained to the police alleging that on 16 August 1990 she had been raped by the applicant at her home. On 27 August 1990 the applicant was arrested and charged with rape. When interviewed by a detective inspector he stated that he had had a sexual relationship with B. for two months, in the course of which consensual sexual intercourse had taken place many times. The applicant also indicated the names of persons who knew about his relationship with B.

On 28 August 1990 the applicant was remanded in custody. On the same day he made an unsuccessful application for bail to the Haringey Magistrates' Court.

The applicant again applied for bail to the Magistrates' Court on 4 September and 26 October 1990, but his applications were refused. No further applications for bail were made until the applicant's release in March 1991. The applicant did not submit an application for bail to the High Court under Section 22 of the Criminal Justice Act 1967 (see below Relevant domestic law and practice).

On an unspecified date shortly after the applicant's arrest a detective inspector approached one of the persons indicated by the applicant as a witness of his relationship with B. The witness allegedly told the inspector that he had seen the applicant and B. kissing, that he had seen B. in the applicant's apartment and that he had seen them in bed together. However, the inspector allegedly failed to communicate his findings to the other police officers who were dealing with the case.

In the first days of March 1991 the applicant's counsel obtained information about B. They learned inter alia that B. had had a history of mental illness since 1981 and that on numerous occasions she had been admitted to hospital under the Mental Health Act 1983. Furthermore, in 1987 B. had made two complaints of rape, on which no action had been taken. In February 1988 she alleged that a Mr. H. had raped her. Mr. H. was arrested and prosecuted on 5 October 1988, and acquitted. On 20 April 1988 B. alleged that a Mr. M. had indecently assaulted her. Mr. M. denied the allegation. On 20 September 1990 he was convicted in a Magistrates' Court and given a suspended sentence.

It later transpired that B. had been raped in 1986 and that her assailant had pleaded guilty and had been sentenced.

The applicant's counsel informed the Crown Prosecution Service of the personal history of B.

On 6 March 1991 the applicant attended the Central Criminal Court where the charge against him was dismissed and he was released.

On 8 October 1991 the applicant instituted proceedings against the Crown Prosecution Service. He claimed damages for negligence alleging inter alia that the police officers were under a duty of care to ascertain whether B. could be a reliable witness when instituting or continuing the criminal proceedings against him and that the police had acted negligently by failing to take adequate steps in this respect and by failing to devise and operate a proper system to ensure that a prosecution would not commence or continue where it was solely based on the evidence of an unreliable witness. The applicant claimed alternatively that he was a victim of malicious prosecution.

The defence stated inter alia that the detective inspector in the case had had information that B. had been raped in 1986 and that her assailant had pleaded guilty. The inspector also knew that H. had been acquitted of raping B. in 1988 and that M. had been convicted of indecently assaulting B. However, the inspector had no knowledge of the mental illness of B. and of her false complaint of rape in September 1987.

On 18 January 1993 the competent court struck out the applicant's claim in negligence as disclosing no reasonable cause of action. The applicant's ensuing appeal was dismissed by a Deputy High Court Judge on 2 February 1993. He was then granted leave to appeal to the Court of Appeal. On 30 January 1995 the Court of Appeal dismissed the applicant's appeal.

The Court of Appeal relied on its decision in Elguzouli-Daf v. Crown Prosecution Service (1994), which it found indistinguishable from the facts of the applicant's case in any relevant respect.

The Court stated inter alia:

"... the interests of the whole community are better served by not imposing a duty of care upon the police officers in their decisions whether or not to place sufficient reliance upon the account of a complainant to justify the making of a charge against an accused ... [O]ther protections and remedies are available when a citizen is aggrieved by the decision of the police officers in that context. The victim has the private law remedy of malicious prosecution which has, for very many years, been regarded as the only remedy at common law available to the plaintiff who complains that a decision to start or to continue a prosecution has been made on inadequate evidence ... The requirement of the proving of malice ... must ... be regarded as a deliberate limitation on policy grounds on the cause of action and ... should not be removed by a decision of the courts ...

[A]s to protections and remedies, a victim may make a complaint against a member of a police force ... Further, there is the whole system of statutory control of the process of criminal investigation and detention of suspects, and of those charged, set out in the provisions of The Police and Criminal Evidence Act 1984 ...

When a complaint is made, such as of rape of a woman where there is no independent evidence to corroborate her account, the duty of the police officer is to investigate as fully and carefully as he reasonably can and to decide in good faith whether in all the circumstances known to him there are reasonable grounds to charge an accused.

The question whether any, and if so what, further investigations should generally, or in a particular case, be made or should have been made into the previous history of the complainant and of her association with other men ... would give raise to issues ... [concerning] matters of policy and discretion in the conduct of investigations ...

The apprehension that, if the court should impose a duty of care upon the police in this case, there would follow a heavy burden upon the police in the defence of proceedings, seems ... well founded ..."

The applicant has not pursued his claim for malicious prosecution. Counsel advised him that on the material known to the police, there was no serious prospect that the applicant could prove that the prosecution was brought without reasonable or probable cause.

On 28 July 1995 the applicant faxed and sent by mail his application to the Commission, in which he raised complaints under Article 5 of the Convention. On 3 June 1996 the applicant submitted "amendments to the application" in which he raised, for the first time, a complaint under Article 6 of the Convention that he had been denied access to the courts.

Relevant domestic law and practice

Section 22 of the Criminal Justice Act 1967, insofar as relevant, provides as follows:

"(1) Where a magistrates' court withholds bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings, the High Court may grant bail or vary the conditions.
..."

COMPLAINTS

1. In his application, as submitted on 28 July 1995, the applicant raises complaints under Article 5 of the Convention.

The applicant complains that he has been denied an enforceable right to compensation in accordance with Article 5 para. 5 of the Convention.

He accepts that he may have been lawfully arrested because at the time of the arrest the police might have had a reasonable suspicion that he was guilty of raping B. However, he claims that after certain lapse of certain time, and since no sufficient efforts were made to verify the reliability of B. as witness, the initial suspicion ceased and his detention became unlawful. Also, no new grounds justified the applicant's continuing detention. Moreover, the authorities have conducted the criminal investigation against the applicant in a manner which was likely to result in an unreasonable prolongation of his detention. The applicant claims that as a result there has been a violation of Article 5 para. 3 of the Convention interpreted in conjunction with Article 5 para. 1 (c). The applicant relies inter alia on the Court's case-law according to which the main purpose of Article 5 para. 3 of the Convention is the prevention of arbitrary deprivation of liberty (Eur. Court HR, Schiesser v. Switzerland judgment of 4 December 1979, Series A no. 34, p. 13, para. 30).

2. In his "amendments to the application" submitted on 3 June 1996 the applicant raises a complaint under Article 6 of the Convention. He claims that the striking out of his claims for damages and the dismissal of his ensuing appeals amounted to a breach of his right to access to a court, the very essence of this right being impaired by the immunity which the prosecution enjoy in respect of civil claims for negligence.

THE LAW

1. The applicant complains under Article 5 (Art. 5) of the Convention that his detention on remand was unlawful, unreasonably lengthy and unnecessary, and that he did not have an enforceable right to compensation.

Article 5 (Art. 5) of the Convention, insofar as relevant, provides as follows.

> "1. 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 or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall ... be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

2. The Commission has first examined the applicant's complaints under Article 5 paras. 1 and 3 (Art. 5-1, 5-3) of the Convention.

The Commission recalls the Convention organs' case law according to which the question whether a period of pre-trial detention can be considered "reasonable" within the meaning of Article 5 para. 3 (Art. 5-3))must be assessed in each case according to its special features. It falls in the first place to the national judicial authorities to examine all the circumstances arguing for and against the existence of a genuine requirement of a public interest justifying continued detention. Such circumstances may be, for example, the existence of a danger of absconding, of collusion, or of repetition of offences. It is essentially on the basis of the reasons given in the domestic decisions and of the true facts stated by the applicant in his appeals that the Convention organs must examine the complaint under Article 5 para. 3 (Art. 5-3) of the Convention (Eur. Court HR, W. v. Switzerland judgment of 26 January 1993, Series A no. 254-A, pp. 15-19, paras. 30-42).

In all circumstances the persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention. The Convention organs must also establish whether the grounds given by the judicial authorities continued to justify the deprivation of liberty (cf. also Eur. Court HR, Van der Tang v. Spain judgment of 13 July 1993, Series A no. 321, p. 17, para. 55).

The Commission further recalls that a "reasonable suspicion" within the meaning of Article 5 para. 1 (c) (Art. 5-1-c) presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence (see Eur. Court HR, Fox, Campbell and Hartley v. the United Kingdom judgment of 30 August 1990, Series A no. 182, pp. 16-18, paras. 32-34; Murray v. the United Kingdom judgment of 28 October 1994, Series A no. 300-A, paras. 50-63).

The Commission notes at the outset that the applicant did not submit an application for bail to the High Court under Section 22 of the Criminal Justice Act 1967, that his last application for bail was submitted to the Magistrates' Court on 26 October 1990, and that the applicant was released on 6 March 1991.

The Commission also notes that in the judicial proceedings ending with the decision of the Court of Appeal of 30 January 1995 the applicant claimed damages for negligence and that these proceedings did not concern directly the alleged unlawfulness and excessive length of his detention on remand.

Nevertheless the Commission need not decide whether the applicant has exhausted all domestic remedies in respect of his complaints under Article 5 (Art. 5) of the Convention and, if so, whether he complied with the six months' time-limit under Article 26 (Art. 26), as his complaints are in any event manifestly ill-founded.

The Commission notes that the applicant accepts that when he was arrested there might have been sufficient facts and information justifying a reasonable suspicion against him. Furthermore, it is accepted that until March 1991, when the applicant was released, the inspector handling his case was unaware of the false complaints of B. in 1987.

In these circumstances the Commission does not consider that the failure of the investigating authorities to discover the full personal history of B. within a certain time after the applicant's arrest can have the effect of terminating the existing reasonable suspicion against him and, hence, of rendering his detention unlawful or incompatible with Article 5 para. 1 (Art. 5-1) of the Convention.

The Commission further notes that there is no assertion on the part of the applicant that, for example, the authorities kept him in

detention without there being any danger of absconding, or that other grounds given in the decisions to detain him and to refuse his release were not plausible. He contends only that the police and the prosecution authorities should have investigated more diligently the personal circumstances of B.

However, the Commission notes that certain of the facts concerning the history of B. had been discovered by the detective inspector, and that therefore certain efforts to investigate her reliability had been made.

The Commission also notes that the applicant's detention lasted for five months and ten days.

In these circumstances the Commission finds that the complaint of the alleged excessive length of the applicant's detention does not disclose any appearance of a violation of Article 5 para. 3 (Art. 5-3) of the Convention.

It follows that the applicant's complaints under Article 5 paras. 1 and 3 (Art. 5-1, 5-3) of the Convention are manifestly ill-founded and have to be rejected under Article 27 para. 2 (Art. 27-2).

3. The applicant also complains under Article 5 para. 5 (Art. 5-5) of the Convention that he did not receive compensation for his detention on remand. However, the Commission has just rejected the allegation that his detention was in contravention of Article 5 paras. 1 and 3 (Art. 5-1, 5-3). Therefore, paragraph 5 of this provision did not require compensation in the present case (cf. Eur. Court HR, Benham v. the United Kingdom judgment of 10 June 1996, to be published in Reports of Judgments and Decisions 1996, para. 50)

It follows that this complaint is also manifestly ill-founded and has to be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains under Article 6 (Art. 6) of the alleged lack of access to court in the determination of his civil right to damages.

The Commission recalls its case-law according to which as regards complaints not included in the initial application itself, the running of the six months' time-limit under Article 26 (Art. 26) of the Convention is not interrupted until the date when the complaint is first submitted to the Commission (cf. No. 10293/83, Dec. 12.12.85, D.R. 45 p. 41; No. 10857/84, Dec. 15.7.86, D.R. 48 p. 106).

The Commission notes that in the present case the applicant's complaint of the alleged lack of access to court was first submitted on 3 June 1996, that is more than six months after the decision of the Court of Appeal of 30 January 1995.

It follows that this part of the application has to be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber