AS TO THE ADMISSIBILITY OF

Application No. 13488/88
by Frank LANG
against the United Kingdom

The European Commission of Human Rights sitting in private on 8 September 1988, the following members being present:

MM. C.A. NØRGAARD, President
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. J. RAYMOND, Deputy 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 23 September 1987 by Frank LANG against the United Kingdom and registered on 6 January 1988 under file No. 13488/88;

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 1965 and resident in Glasgow. He is represented by Mr. John Carroll, a solicitor practising in Glasgow. The facts as submitted by the applicant may be summarised as follows.

The applicant was tried at Kilmarnock Sheriff Court on a charge of stealing £1,800. The applicant, who had been granted legal aid, was represented by a solicitor. The applicant was found guilty on 10 December 1986 and sentenced to six months imprisonment. The applicant appealed by way of case stated on grounds, inter alia, that the Sheriff erred in finding sufficient evidence for there to be a case to answer, that the Sheriff held second best evidence to be admissible and to be preferred to best evidence and that the Sheriff erred as to the facts of the case, in particular as to the evidence of a police witness and a video tape.

The applicant was granted an interim appeal certificate for the purpose of legal aid and certain preliminary work was carried out. However, his application for a full certificate which was supported by his solicitor's written opinion that the grounds of appeal were substantial was refused by a letter dated 11 May 1987. Following the refusal of legal aid, the applicant's solicitor sought

further advice from counsel, who, however, in opinions dated June and 5 September 1987, concluded that the appeal had no prospects of success. Without funds, the applicant was obliged to plead his own case before the High Court, his solicitors having provided him with notes and relevant documents.

The applicant's appeal was upheld by the court on 22 September 1987 and his conviction was quashed. The reasons given by the court were stated briefly as follows:

> "In this appeal at the instance of Frank Lang in view of the concessions made by the Advocate Depute and the attitude which he has very properly taken up, we find it unnecessary to answer the three questions in the case and we shall simply quash the conviction."

Following a request for information concerning this decision dated 4 March 1988, the Government stated that information had been received by the Crown Authorities and defence which suggested that one of the police officers was mistaken in his identification of the applicant from the video recording. This information was not fully canvassed at the trial and was not put to the police officer in cross-examination. On full consideration of the matter before the appeal court, it was apparent that there was at least a risk that part of the identification evidence was unsound. Accordingly, it was conceded by the Crown that the conviction should be quashed.

By a letter dated 13 May 1988, in reply to the Government's statement, the applicant's solicitor submitted that during the trial one of the police officers had pointed to a person on the video film as being the applicant, but who was in fact a bank employee. The applicant's solicitor states that it would have been professional negligence on the part of the solicitor defending the applicant to have pointed this out to the police officer or to suggest that he should point to his client instead. The matter was obvious to the defence and was simply left as it was to demonstrate the unreliability of the identification.

As a result of the work carried out by his solicitors on his behalf in respect of preparing his appeal, the applicant is now liable to an account of £397,54, which he is unable to pay without grave financial hardship.

COMPLAINTS

The applicant complains that he was denied his basic human rights in that though he had insufficient funds to meet the cost of legal representation, he was denied free legal assistance. Although his appeal was successful, he is unable to secure costs from the courts and accordingly is liable to an account in respect of the legal assistance, which was given.

The applicant invokes Article 6 para. 1 and Article 6 para. 3 (c) of the Convention.

THE LAW

The applicant complains that he was denied free legal assistance for his appeal contrary to Article 6 para. 3 (c) (Art. 6-3-c) of the Convention, which provides as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> ...

(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;"

The Commission recalls that the evaluation of the requirements of justice under Article 6 para. 3 (c) (Art. 6-3-c) of the Convention lies in the first place with the domestic authorities. The Commission notes the applicant was granted legal aid for his trial and an interim certificate for the purposes of his appeal. An application for full legal aid was submitted to the Scottish Legal Aid Board, supported by his solicitor's opinion but was refused by letter dated 11 May 1987. There is no indication that in refusing legal aid, the Scottish Legal Aid Board acted on arbitrary grounds. The Commission recalls that counsel instructed by the applicant's solicitor was of the opinion that the appeal stood no prospects of success. The Commission further notes that the subsequent quashing of the conviction was the result of a concession of the Advocate Depute as to the possible unsoundness of part of the identification evidence and that the Court of Appeal considered it unnecessary to go on to deal with the applicant's three points of appeal.

In these circumstances, the Commission concludes that it has not been shown in the present case that the interests of justice within the meaning of Article 6 para. 3 (c) (Art. 6-3-c) required a grant of free legal assistance to the applicant for the appeal proceedings. It follows that this application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(J. RAYMOND) — (C.A. NØRGAARD)