AS TO THE ADMISSIBILITY OF

Application No. 15703/89
by Paul LAW
against the United Kingdom

The European Commission of Human Rights sitting in private on 15 February 1990, the following members being present:

MM. C.A. NØRGAARD, President
E. BUSUTTIL
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
J. CAMPINOS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 28 July 1989 by Paul LAW against the United Kingdom and registered on 27 October 1989 under file No. 15703/89;

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 United Kingdom citizen, born in 1963 and presently detained at HM Prison Stafford, England.

He complains to the Commission of the interview he gave to the police on 8 February 1989. He had been arrested the day before on suspicion of armed robbery and wounding with intent. He was first interviewed on the morning of 8 February with his solicitor present to give him advice. There was a break for lunch, after which the interview continued in the absence of the solicitor with the applicant's consent. It was tape-recorded. As it went on, however, the applicant requested his solicitor's presence. The applicant was told that this was not possible and the police refused to discontinue the questioning. The applicant states that the rest of the interview was made under duress.

Section 58 of the Police and Criminal Evidence Act 1984 entitles the accused to consult a solicitor privately at any time. If the police refuse to permit consultation a record has to be made of the refusal and the reasons for it. The Act strictly limits the grounds on which such a refusal can be made, e.g. when there are reasonable grounds for believing that legal consultations would lead to an interference with or harm to evidence connected with a serious

arrestable offence. Sections 76 and 78 of that Act provide respectively for the exclusion from a trial of any confessions by an accused person obtained by "oppression", and for the exclusion of any evidence which has been obtained in such a way that it would have an adverse effect on the fairness of the proceedings. "Oppression" within the meaning of Section 76 includes torture, inhuman or degrading treatment and the use or threat of violence.

Section 66 of that Act requires the Secretary of State to issue a Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers. Paragraph 6 (5) of the Code requires that if a person is permitted to consult a solicitor who is available at the time the interview begins or when it is in progress, he must be allowed to have his solicitor present whilst he is interviewed. However, while a failure to observe the Code may result in disciplinary proceedings against the police officers concerned, evidence obtained as a result of this failure is not necessarily inadmissible at the trial.

COMPLAINTS

The applicant complains that he was denied legal representation and the right to remain silent, in breach of Article 6 paragraph 3 (c) of the Convention.

THE LAW

The applicant has complained that he was denied legal representation and the right to remain silent, in breach of Article 6 paragraph 3 (c) (Art. 6-3-c) of the Convention which guarantees, inter alia, the right to defend a criminal charge through legal assistance of one's own choosing.

The Commission refers to its previous case-law that Article 6 paragraph 3 (c) (Art. 6-3-c) of the Convention gives the accused a general right to assistance and support by a lawyer throughout the whole of the criminal proceedings (Can v. Austria, Comm. Report 12.7.84, para. 54). The Commission notes that the applicant was initially assisted by his lawyer for half a day. He then agreed to continue the police questioning for a further half day without the lawyer, although changing his mind later. However, he did not thereafter refuse to answer any further questions from the police. Moreover, the applicant has not alleged that he was denied subsequent consultations with his lawyer. Finally the Commission notes that the admissibility of any evidence or confession which has been obtained by oppression during that afternoon of police questioning can be challenged by the applicant at his trial. Furthermore, he can contend that the evidence should not be admitted on the ground that it would have an adverse effect on the fairness of the proceedings. Were the applicant to make such a challenge, his allegations could be verified by the tape-recording of the interview. In the light of these factual circumstances the Commission concludes, even assuming that the applicant may be said to have complied with the requirements of Article 26 (Art. 26) of the Convention, that the case does not disclose any appearance of a violation of Article 6 para. 3 (c) (Art. 6-3-c) of the Convention. It follows that the 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)