AS TO THE ADMISSIBILITY OF

Application No. 16592/90
by M.
against the United Kingdom

The European Commission of Human Rights sitting in private on 7 January 1991, the following members being present:

MM. C. A. NØRGAARD, President
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. DANELIUS
Sir Basil HALL
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 March 1988 by M. against the United Kingdom and registered on 16 May 1990 under file No. 16592/90;

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 a British citizen born in 1939 and currently serving a sentence of seven years in H.M. Prison Edinburgh. The facts as submitted by the applicant may be summarised as follows.

The applicant was tried on charges relating to the supply of heroin in December 1986. He was represented by counsel and solicitor. The applicant was convicted on 22 December 1986 and sentenced to seven years' imprisonment.

The applicant appealed against conviction on the grounds, inter alia, that there was insufficient evidence on which the jury could convict. He also appealed against his sentence. The appeal was heard before the High Court on 28 May 1987 and was adjourned for the preparation of notes of evidence. The hearing was resumed on 18 February 1988. The applicant was represented by counsel. The Court dismissed the applicant's appeal finding that there was in fact sufficient evidence to support the jury's verdict.

The applicant considered that the Court had failed to address three of his four grounds of appeal and petitioned the Secretary of State for Scotland under Section 263 (1) of the Criminal Procedure (Scotland) Act 1975 for his case to be referred back to the High

Court.

The applicant took a small claims action against the Secretary of State to require the Secretary of State to refer his case to the High Court. The Sheriff dismissed the action as incompetent and the applicant's appeal against this decision was dismissed by the Sheriff Principal on 6 March 1990.

COMPLAINTS

The applicant complains of his conviction and that he did not have a fair hearing of his appeal, since the High Court failed to consider three of his grounds. He invokes Article 6 of the Convention.

The applicant also complains of interference with his correspondence by the prison authorities in:

1) that documents were removed from his letter of 21 September 1988 to Rough Justice (i.e. new evidence, the Opinion of the Court and Note of Appeal): his allegation is based on the fact that these documents were not included with the others returned by Rough Justice;

2) that the applicant submitted two letters of 6 February 1989 to the Commission and to a Chief Constable to be posted. When he asked for these to be returned so that he could re-write them they were returned in different envelopes indicating that they had been opened;

3) that documents were removed from the applicant's letter to the Commission of 22 June 1988 (since when the Secretariat returned his documents not all of them were enclosed);

4) that documents were removed from the applicant's petition to the Court dated 6 September 1988 (since the Court later asked the Secretary of State for copies);

5) that a letter of 14 October 1989 to the Court relating to his small claims action was stopped by the Prison Governor;

6) that a recorded delivery slip was withheld by the Governor in or about September - October 1989;

7) that in or about September - October 1989 a cheque was taken out of a letter sent to the Sheriff Court in relation to his action.

THE LAW

1. The applicant complains of his conviction and of the hearing of his appeal and invokes Article 6 para. 1 (Art. 6-1) of the Convention which provides in its first sentence:

"In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3

pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

The applicant also complains that the proceedings were not fair as required by Article 6 para. 1 (Art. 6-1) of the Convention. The Commission recalls, however, that the applicant was represented by counsel at trial and on appeal. It notes that the applicant appealed on the ground that there was insufficient evidence to convict but that after considering the notes of evidence, the High Court rejected this ground of appeal. The Commission finds, after an examination of the facts as submitted by the applicant, no appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

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

2. The applicant also complains of interference with his correspondence by the prison authorities.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of the provisions of the Convention as, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case the applicant failed to petition the Secretary of State concerning these matters and has, therefore, not exhausted the remedies available to him under United Kingdom law. Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this part of the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A. NØRGAARD)