AS TO THE ADMISSIBILITY OF

Application No. 12253/86
by Thomas Fitzpatrick MOFFAT
against the United Kingdom

The European Commission of Human Rights sitting in private on 4 March 1987, the following members being present:

MM. C.A. NØRGAARD, President
G. SPERDUTI
J.A. FROWEIN
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
H. VANDENBERGHE
Mr. F. MARTINEZ

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 6 December 1985 by Thomas Fitzpatrick MOFFAT against the United Kingdom and registered on 1 July 1986 under file No. 12253/86;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

FACTS

The applicant is a British citizen born in 1955 and resident in Glasgow. He is currently serving a 14 year prison sentence in Peterhead. The facts as submitted by the applicant may be summarised as follows.

The applicant was arrested and charged with armed robbery and various other offences. He was tried at the High Court in Airdrie in April and May 1982. The applicant had instructed his counsel to apply to adjourn the trial in order to allow the applicant to prepare his defence fully. The Court granted an adjournment of one day. The applicant's counsel failed to apply as instructed for a further adjournment. The applicant claims that as a result he was not given the statutory 29 days notice from the service of indictment to his trial. The applicant also alleges that he did not see the police precognitions until 6 days before the trial and he then became aware that the police evidence against him was fabricated and included the planting of incriminating evidence in his home and evidence of fabricated statements allegedly made by him to the police. His defence during his trial was accordingly based on the allegation that the police witnesses were giving fabricated evidence. The jury

however found the applicant guilty of armed robbery on 13 May 1982 and he was sentenced to 18 years imprisonment.

The applicant appealed against conviction under S. 228 (2) of the Criminal Procedure (Scotland) Act 1975 on the basis that he had new evidence to put before the appeal court and that the trial judge had made prejudicial remarks to the jury concerning the credibility of a police witness. The court held that any irregularity in the judge's summing-up had been corrected by a further explanation to the jury by the judge. The court refused to take into account certain evidence which had been available at the time of trial and held that the new evidence which had been brought forward by the applicant was not conclusive and would not have had any effect on the verdict of the jury. His appeal against conviction was therefore dismissed on 3 March 1983, though his sentence was reduced by four years.

COMPLAINTS

The applicant complains that he has been wrongly convicted. He complains that he was not given adequate time and facilities for the preparation of his defence. He also complains of being unable to present certain witnesses which would have proved the inconsistency of the police evidence, and that the decision of the appeal court as to the new relevance of the evidence deprived him of a fair hearing before a jury.

The applicant invokes Article 6 para. 3 (b) and (d), Articles 8 and 10 of the Convention.

THE LAW

The applicant alleges violations of Articles 6 para. 3 (b) and (d), 8 and 10 (Art. 6-3-b, 6-3-d, 8, 10) of the Convention.

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 appeal court which was the final decision regarding the subject of this particular complaint was given on 3 March 1983 whereas the application was submitted to the Commission on 6 December 1985, that is more than six months after the date of this decision. While it is true that the applicant had previously written to the Commission, the Commission finds that he had not thereby effectively introduced the present application since he did not disclose the basis of his complaint until his letter dated 6 December 1985.

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

It follows that the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention as having been introduced out of time.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)