AS TO THE ADMISSIBILITY OF

Application No. 27286/95
by Melvin John PARKER
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 28 June 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN

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 17 February 1995 by Melvin John PARKER against the United Kingdom and registered on 10 May 1995 under file No. 27286/95;

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 a United Kingdom citizen born in 1956. He lives in Henlow, in Bedfordshire and has been unemployed and in receipt of State benefits since about 1990. He is represented before the Commission by Messrs. Simkins, solicitors, of Baldock. The facts of the case, as submitted by the applicant's solicitors, may be summarised as follows.

The applicant was summoned to appear before Ampthill Magistrates' Court for non-payment of the community charge in October 1992. Legal aid was not available and the applicant was not represented. The magistrates were aware that the applicant's only source of income was the State benefits he received. A warrant was issued committing the applicant to prison for 30 days. He served the term.

COMPLAINTS

The applicant alleges a violation of Article 5 of the Convention. He considers that his detention was neither "in accordance with a procedure prescribed by law" within the first paragraph of Article 5 para. 1 nor "lawful" within the meaning of Article 5 para. 1(a) or (b). He also alleges a violation of Article 5 para. 5 of the Convention as, by virtue of Section 108 of the Courts and Legal Services Act 1990, he was unable to bring an action against the magistrates who imprisoned

him.

The applicant also alleges a violation of Article 6 of the Convention as legal aid was not available for the hearing in October 1992.

The applicant refers generally to the case of Stephen Andrew Benham (No. 19380/92, Comm. Report 29.12.94, pending before the European Court of Human Rights). It was as a result of that case that he became aware that the magistrates' court had acted in excess of its powers.

THE LAW

1. The applicant alleges a violation of Article 5 (Art. 5) of the Convention. He considers that his detention did not comply with Article 5 para. 1 (Art. 5-1), and that the effect of Section 108 of the Courts and Legal Services Act 1990 was to deprive him of the right to seek compensation in respect of that unlawful detention.

Article 5 (Art. 5) of the Convention provides, so far as relevant, 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:
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> a. the lawful detention of a person after conviction by a competent court;
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> b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
> ...
>
> 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."

Article 26 (Art. 26) of the Convention provides that the Commission may only deal with a matter "after all domestic remedies have been exhausted ... and within a period of six months from the date on which the final decision was taken".

The Commission recalls that in the case of Benham (No. 19380/92, Comm. Report 29.12.94, pending before the European Court of Human Rights), it expressed its opinion that there had been a violation of Article 5 (Art. 5) of the Convention in that the applicant's detention had been unlawful, and that he was unable to sue for unlawful imprisonment in respect thereof. In that case, the Commission had recourse to the decision of the Divisional Court in concluding that the applicant's detention had been unlawful within the meaning of the Convention.

In the present case, the applicant did not challenge the decision of the magistrates, either by way of judicial review or by way of case stated. The Commission does not, therefore, have the benefit of the views of the superior courts in the matter. The question arises whether the rule on exhaustion of domestic remedies required the applicant to put his case to the High Court. The Commission notes in this connection that although it had recourse to the High Court's reasoning in concluding that there had been a violation of Article 5 (Art. 5) in the case of Benham, the High Court's findings did not satisfy the requirements of that provision. It is therefore possible that the High Court was not an effective remedy within the meaning of Article 26 (Art. 26) of the Convention.

On the other hand, without the benefit of the High Court's analysis of the requirements of the domestic law in the case, it is difficult for the applicant to satisfy the requirements of the Convention in establishing that his detention was, or may have been, unlawful in domestic law.

However, even if the applicant was not required to pursue an application to the High Court against the committal order, the Commission may not deal with the complaint because, where there is no remedy against the acts of a domestic authority, the six months' time-limit in Article 26 (Art. 26) runs from the date of the decision complained of (see, for example, No. 9599/81, Dec. 11.3.85, D.R. 42 p. 33 and the cases referred to at pp. 40, 41). The decision in the present case was taken in October 1992, and the applicant was detained for 30 days, that is, until some time in November 1992.

Even if the Commission were to take as the "final decision" not the decision of the magistrates, but the last day on which the applicant was detained, he has still not introduced his application within six months, as he first wrote to the Commission on 17 February 1995. An examination of the case does not disclose any special circumstances which might have interrupted or suspended the running of that period. In particular, the fact that the applicant only became aware of the possible Convention issues when he heard about the Benham case on the radio cannot affect the running of the six months' period.

It follows that the applicant has not complied with the requirements of Article 26 (Art. 26) of the Convention, and this complaint must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also alleges a violation of Article 6 (Art. 6) of the Convention because of the absence of legal aid before the magistrates.

In this connection, and to the extent that the complaint is severable from the remainder of the application, the Commission notes that legal aid is not available in community charge committal proceedings as a matter of law: the magistrates have no discretion (which could possibly be challenged) to grant legal aid. An application to the High Court could therefore not have resulted in the grant of legal aid to the applicant. Further, if proceedings before the High Court had been successful - as in the case of Benham - the position as to legal aid would not be affected.

In connection with this complaint, the Commission finds that the six months' period referred to in Article 26 (Art. 26) of the Convention began with the magistrates' decision and immediate committal order in October 1992. Again, the applicant introduced his application only on 17 February 1995, that is, more that six months after the expiry of the period.

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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)