AS TO THE ADMISSIBILITY OF

Application No. 26918/95
by John PRATT
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 12 April 1996, the following members being present:

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

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 5 December 1994 by John PRATT against the United Kingdom and registered on 29 March 1995 under file No. 26918/95;

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 facts of the case as submitted by the applicant may be summarised as follows.

The applicant is a United Kingdom national born in 1975 and residing in Glasgow. Before the Commission he is represented by John Carroll and Company, solicitors of Glasgow.

On 11 April 1994, following his conviction by Glasgow Sheriff Court on charges of robbery and contravention of bail, the applicant was sentenced to 60 days' imprisonment.

On the same day he submitted to the Scottish Legal Aid Board an application for legal aid to appeal against the conviction. On 14 April 1994 legal aid was granted for the preparation and the lodging of an appeal and of a petition for release on bail.

The applicant appealed and on 15 April 1994 he was released on bail pending the outcome of the appeal.

On an unspecified date the applicant submitted to the Legal Aid Board an application for legal aid to cover the hearing of the appeal. On 30 September 1994 this was refused.

On 27 September 1994 the applicant's solicitors in Glasgow became aware of the fact that the hearing of the appeal at the High Court of Justiciary in Edinburgh had been scheduled for 4 October 1994. On 30 September 1990 they met the applicant and informed him of the date and the place of the hearing. Later that day the solicitors were informed of the refusal of legal aid. Thereupon, they contacted the applicant again and arranged a meeting on 3 October 1994 to give him instructions and a written note to be read by him before the Court.

However, the applicant failed to keep his appointment with the solicitors on 3 October 1994 and did not appear at the Court in Edinburgh on 4 October 1994.

On 4 October 1994 a solicitor from Edinburgh, who had been asked by the applicant's Glasgow solicitors to assist him informally while in Edinburgh, appeared before the Court and explained that the refusal of legal aid was under review and asked that the appeal be continued at a later date. The Court noted that the applicant was not present and that it lacked information as to whether the applicant had been given due notice of the hearing date. For these reasons the Court decided to continue the hearing on 7 October 1994.

The applicant's solicitors contacted him in the evening of 4 October 1994 and informed him of the new hearing date. As regards his failure to appear before the Court earlier that day the applicant explained that he had not had the money to pay his fare from Glasgow to Edinburgh, that his home telephone had not been working and that he had not had the money even for a telephone call to his solicitors. He had spent his weekly £ 31 of income support just before 30 September 1994, when he had been informed about the hearing.

On or about 6 October 1994 the Legal Aid Board revised its previous decision and granted legal aid for the hearing of the appeal in the applicant's case.

On 7 October 1994 the applicant and his solicitor appeared before the Court in Edinburgh. After examining the explanations given as to whether the applicant had been informed of the initial hearing date and as regards the reasons for his failure to appear, the Court found that there was "want of insistence" on the part of the applicant and refused to proceed with the appeal.

This decision was based on the legal requirement that "a person who is granted interim liberation pending the hearing of his appeal must appear at every hearing of the appeal of which he receives due notice". In cases of failure to fulfil this legal condition without a satisfactory excuse, the course to be taken was to refuse the appeal for want of insistence. The Court noted inter alia that the applicant had not mentioned his financial difficulties to his solicitors on 30 September 1994 and had not contacted them at any later stage. The Court assessed the explanation for the applicant's failure to appear as unsatisfactory and stated that, had the Court known, on 4 October 1994, the relevant circumstances, it would have had to refuse the appeal. This was, therefore, the only possible decision.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that he was unlawfully and arbitrarily denied a fair hearing of his appeal against conviction. In fact the applicant did have a reasonable excuse for his failure to appear before the Court on 4 October 1994. Moreover, under the relevant provisions the Court had to allow the hearing of the appeal when a "cause [was] shown" for the applicant's failure to attend. Thus, in the applicant's opinion, proving the reasonableness of the excuse was not even necessary.

The applicant also complains under Article 14 in conjunction with

Article 6 of the alleged discrimination on the basis of wealth. Thus, had he been able to pay his travel expenses, he would have had a hearing. As the Court failed to take into account his financial difficulties, the applicant was denied a hearing because he was poor.

THE LAW

The applicant complains under Article 6 (Art. 6) taken alone and in conjunction with Article 14 (Art. 6+14) of the Convention that he was denied a fair hearing of his appeal unlawfully, arbitrarily and because he was poor.

These provisions, insofar as relevant, provide as follows:

Article 6 (Art. 6)

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ..."

Article 14 (Art. 14)

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... property ... or other status."

The Commission recalls the Convention organs' case-law according to which Article 6 (Art. 6) of the Convention does not as such guarantee a right to appeal but if such a right is provided under domestic law, the requirements of Article 6 (Art. 6) must be respected in the appeal proceedings. However, Article 6 (Art. 6) does not prevent Contracting States from regulating access to appeal jurisdictions in order to ensure the proper administration of justice. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way that the very essence of the right is impaired (Appl. No. 16598/90, Dec. 11.12.90, D.R. 66, p. 260; mutatis mutandis Appl. No. 12275/86, Dec. 2.7.91, D.R. 70, p. 47; Eur. Court H.R., Philis judgment of 27 August 1991, Series A No. 209, p. 20 para. 59).

A complaint of an interference with the rights under Article 14 in conjunction with Article 6 para. 1 (Art. 14+6-1) of the Convention concerning access to court must be examined in the light of the particular circumstances of the case in point (Appl. No. 7973/77, D.R. 17, p. 74; Appl. No. 13012/87, Dec. 4.9.89, D.R. 62, p. 255).

The Commission notes that the High Court of Justiciary in the applicant's case refused to hear his appeal as he had failed to meet a procedural requirement, namely to appear in person. The High Court of Justiciary inquired into the reasons for the applicant's failure to attend and did not accept his contention that this had been impossible for him, through no fault of his own.

Furthermore, the applicant has not shown that these findings were arbitrary or discriminatory. The Court applied the relevant legal rules and examined the submissions of the applicant and his lawyers as regards the particular circumstances.

Moreover, the Commission cannot accept that the applicant had been unable to personally call or arrange a telephone call to his solicitors to inform them of his financial difficulties.

Insofar as the applicant may be understood as alleging that the initial refusal of legal aid for the hearing of his appeal contributed to unfairness in the appeal proceedings, the Commission notes that it was the applicant's absence that ensured the dismissal of his appeal, and not the lack of legal representation to argue the substantive

grounds for that appeal.

In view of these facts the Commission is satisfied that the applicant has not been denied a fair hearing contrary to Article 6 para. 1 (Art. 6-1) taken either alone or in conjunction with Article 14 (Art. 6-1+14) 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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)