AS TO THE ADMISSIBILITY OF

Application No. 16212/90
by R.
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 17 April 1991, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
H. DANELIUS
Sir Basil HALL
MM. C.L. ROZAKIS
L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
B. MARXER

Mr. M. de SALVIA, Secretary to the First 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 3 April 1989 by R. against the United Kingdom and registered on 26 February 1990 under file No. 16212/90;

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 on 7 January 1960. He is currently detained at Shotts prison, Lanarkshire, Scotland, serving a life prison sentence. He is represented before the Commission by Messrs. Ian McCarry, solicitors, of Glasgow. The facts of the case may be summarised as follows.

The applicant was charged with the following offences: 1) rape, assault, indecent assault and robbery of a named woman between 10 June 1986 and 31 December 1986; 2) assault and indecent assault of a named woman between 1 September 1986 and 30 November 1986; 3) assault, indecent assault, robbery and abduction of a named woman between 10 June 1986 and 31 December 1986; 4) assault, indecent assault, rape and robbery of a named woman between 1 January 1987 and 31 December 1987; 5) assault, indecent assault and robbery of a named woman between 1 February 1987 and 28 February 1987; 6) assault, indecent assault and robbery of a named woman between 1 January 1987 and 31 December 1987; 7) theft of bracelet from premises between 25 and 29 April 1988; and 8) abduction, assault, indecent assault, rape and robbery of a named woman between 3 and 4 September 1988.

At a preliminary diet of the High Court on 7 December 1988, the applicant, legally aided by counsel, objected to the latitude and the lack of relevancy of the charges. The High Court ordered that charges numbers 5 and 7 be withdrawn and that the Crown be given leave to amend charges 1, 3, 4 and 6 to meet partially the objections of the applicant. The Crown amended the charges. In charge 1 the period was reduced to between 1 April 1986 and 30 September 1986. In charge 3 the period was reduced to between 1 October 1986 and 25 December 1986.

In charge 4 the period was reduced to between 1 April 1986 and 30 September 1986. In charge 6 the period was reduced to between 10 January 1987 and 17 January 1987.

On 19 December 1988 the applicant was convicted of the six amended charges by the High Court at Airdrie. He was sentenced to life imprisonment. The applicant states that counsel was not engaged until two or three days before his trial.

The applicant's solicitors drafted grounds of appeal on behalf of the applicant. The grounds of appeal against conviction were that the applicant had been prejudiced at the trial by the latitude of the charges against him, the bias of the judge and his misdirection of the jury. The grounds of appeal against sentence were that it was excessive, given the applicant's background and personal history and that the judge did not order medical or psychiatric reports on the applicant.

On 8 September 1989 the Scottish Legal Aid Board received an application from the applicant seeking legal aid for an appeal against conviction and sentence. The Board refused legal aid as it did not consider that there were substantial grounds of appeal.

Given the applicant's means there was no possibility that he could afford to instruct counsel privately.

On 29 September 1989 the appeal was heard. The applicant had no legal representation. He relied on draft grounds of appeal proposed by his solicitor. The appeal was dismissed.

COMPLAINTS

The applicant complains under Article 6 para. 3 (c) of the Convention that he was not given means to pay for legal assistance at the hearing of his appeal on 29 September 1989, when the interests of justice required it.

He also complains under Article 6 of the Convention of insufficient time his counsel was permitted for preparing the trial, of the behaviour of his lawyer, and that his sentence was excessive.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 April 1989 and registered on 26 February 1990.

On 2 July 1990, the Commission decided to give the United Kingdom Government notice of the application and to invite them to submit observations on the admissibility and merits of the application.

The Government submitted its response on 7 December 1990 and the applicant replied on 5 February 1991.

On 14 December 1990, the Commission decided to grant the applicant legal aid.

On 9 April 1991 the Commission decided to transfer the case to the First Chamber.

THE LAW

1. The applicant complains that he was refused legal aid for his appeal against conviction and sentence contrary to the interests of justice. He invokes Article 6 (Art. 6) of the Convention. The Commission has examined this complaint under Article 6 para. 1 and

para. 3 (c) (Art. 6-1, 6-3-c) of the Convention, which provide, so far as relevant, as follows:

"1. In the determination of his civil rights and obligations or 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. ..."

"3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

The Commission notes that the Government have made no observations as to admissibility, while reserving their position on the merits, of this complaint.

The Commission has made a preliminary examination of the present applicant's complaint concerning legal aid on appeal under Article 6 paras. 1 and 3 (c) (Art. 6-1, 6-3-c) of the Convention (cf. Eur. Court H.R., Granger judgment of 28 March 1990, Series A no. 174). It considers that it raises serious issues of fact and law which are of such complexity that its determination should depend on a full examination of the merits. It follows that this complaint cannot be declared manifestly ill-founded under Article 27 para. 2 (Art. 27-2) of the Convention and must be declared admissible, no other ground for declaring it inadmissible having been established.

2. The applicant also complains that his counsel was permitted insufficient time for preparing the trial, of the behaviour of his counsel and that his sentence was excessive. He alleges a violation of Article 6 (Art. 6) of the Convention.

As to the complaint concerning the time the applicant's counsel had for preparing the trial, the Commission notes that the applicant had been represented by a solicitor under the legal aid scheme from an early stage of the proceedings. The Commission recalls that it may not consider complaints concerning individuals, including lawyers, and finds that the applicant has not indicated that any special issue arose in connection with his counsel which could not have been dealt with by his solicitor at an earlier stage.

As to the allegation that the sentence was excessive, the Commission notes that Article 6 (Art. 6) of the Convention provides procedural guarantees rather than a review of sentencing or sentencing policy. The Commission finds no indication in the file that the sentence was so excessive that any other provisions of the Convention may be at issue.

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

For these reasons, the Commission unanimously

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant's complaint relating to the lack of legal aid on the hearing of his appeal;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber	President of the First Chamber
(M. DE SALVIA)	(J.A. FROWEIN)