AS TO THE ADMISSIBILITY OF

Application No. 20858/92
by Graham ROBINSON
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 5 May 1993, the following members being present:

MM. E. BUSUTTIL, Acting President of the First Chamber
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. B. MARXER
G.B. REFFI

Mrs. M.F. BUQUICCHIO, 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 8 July 1992 by Graham ROBINSON against the United Kingdom and registered on 28 October 1992 under file No. 20858/92;

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 1961 and presently detained, serving a sentence of life imprisonment, at HM Prison Gartree, Leicester. He is represented before the Commission by Messrs. Lawrences, Solicitors, Wellingborough, Northhamptonshire.

The facts of the present case, as submitted by the applicant and which may be deduced from documents submitted with the application, may be summarised as follows :

On 17 December 1988, after an angry altercation with some people after pub closing time, the applicant fetched a bayonet from his car and stabbed three of the people with whom he was arguing. One of them was killed, the other two were seriously injured. These facts are not disputed by the applicant.

The applicant was tried for murder and attempted murder. In respect of the first charge his defence was that he was not guilty of murder but was guilty of manslaughter on the grounds of diminished responsibility, based on the evidence of three psychiatrists. The trial judge directed the jury that the burden of proving that the applicant was suffering from abnormality of mind which substantially diminished his mental responsibility for his actions was on the defence, pursuant to section 2 of the Homicide Act 1957. He also directed the jury that they did not have to accept the psychiatric evidence.

The applicant was convicted of murder and attempted murder and sentenced to life imprisonment.

On appeal against conviction it was submitted on his behalf that the judge misdirected the jury and that the verdict was against the weight of the psychiatric evidence. The Court of Appeal dismissed the applicant's appeal on 18 January 1992. Counsel advised against seeking leave to appeal to the House of Lords.

COMPLAINTS

The applicant complains that the obligation on the defence to prove his diminished responsibility was contrary to Article 6 para. 2 of the Convention.

THE LAW

The applicant complains that the obligation placed upon him by section 2 of the Homicide Act 1957 to prove his mental impairment at his trial was contrary to Article 6 para. 2 (Art. 6-2) of the Convention which provides as follows :

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The applicant's attention has been drawn to a seemingly comparable complaint concerning the defence of insanity in No. 15023/89, H v. the United Kingdom (Dec. 4.4.90, unpublished). Nevertheless he contends that the facts of that earlier case wer unusual and distinguishable from his application. In particular he submits that the previous application was concerned with the common law presumption of sanity and not with the statutory requirement that a defendant like him show his diminished responsibility in order to negate his liability for the offence of murder with its attendant life sentence.

However the Commission is not convinced by the applicant's submissions. Both cases presume the accused's ability to understand what he was doing at the time of the crime unless he can show there was some serious mental impairment of a permanent or transient kind.

The Commission notes that the statutory provision of which the applicant complains does not concern the presumption of innocence, as such, but an inherent presumption of mental normality. In this context the Commission refers to the judgment of the Court in the Salabiaku case :

> "Presumptions of fact or of law operate in every legal system. Clearly, the Convention does not prohibit such presumptions in principle. It does, however, require the Contracting States to remain within certain limits in this respect as regards criminal law ...
> Article 6 para. 2 (Art. 6-2) does not ... regard presumptions of fact or of law provided for in the criminal law with indifference. It requires States to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence."
> (Eur. Court H.R., Salabiaku judgment of 7 October 1988, Series A no. 141, pp. 15-16, para. 28)

The Commission observes that in English law the burden of proof remains with the prosecution to prove beyond reasonable doubt that the accused did act as charged. The Commission does not consider that requiring the defence to present evidence concerning the accused's mental state at the time of the alleged offence, constitutes in the present case an infringement of the presumption of innocence. Such a requirement cannot be said to be unreasonable or arbitrary. It finds, therefore, no appearance of a violation of Article 6 para. 2

(Art. 6-2) of the Convention in the present case.

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — Acting President of the First Chamber

(M.F. BUQUICCHIO) — (E. BUSUTTIL)