AS TO THE ADMISSIBILITY OF

Application No. 25901/94
by Andrew Graham RUSSELL
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 12 October 1994 by Andrew Graham RUSSELL against the United Kingdom and registered on 9 December 1994 under file No. 25901/94;

Having regard to:

- the Commission's decision of 28 February 1996 to communicate the applicant's complaint concerning the length of the proceedings and to declare inadmissible the remainder of the application;

- the observations submitted by the respondent Government on 5 June 1996 and the observations in reply submitted by the applicant on 19 July 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1962. He is serving a prison sentence. He is represented before the Commission by Messrs. B.M. Birnberg & Co., solicitors, London.

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

The applicant was arrested on 31 January 1988 and questioned in connection with an escape from Gartree prison, Leicestershire, in December 1987. On 3 February 1988 he was again questioned, in the presence of his solicitor, in connection with the escape, and also in connection with his responsibility for a robbery which had taken place in London on 13 January 1988.

The proceedings relating to the escape continued, but the applicant heard nothing more about the robbery. On 15 November 1988 the applicant's solicitors asked the Crown Prosecution Service (CPS) whether any steps were to be taken in connection with the robbery. The CPS replied on 5 December 1988 that the prosecutor had "decided that there is insufficient evidence against [the applicant] to justify prosecution".

On 19 June 1989 the applicant was convicted of offences relating to the escape from Gartree prison.

On 25 July 1989 the CPS wrote to the applicant's solicitors that they had now decided to prosecute the applicant in respect of the robbery. They said that "no steps [were] taken in this matter earlier to avoid publicity while your client's trial in respect of the ... escape was being held ...".

On the following day, 26 July 1989, the CPS applied to a High Court judge, ex parte and without giving notice to the applicant's solicitors, for the issue of a voluntary bill of indictment. In the supporting affidavit no reference was made to the letter of 5 December 1988. The application was granted and a voluntary bill of indictment was issued charging the applicant with, inter alia, robbery.

The case was initially listed for trial on 18 April 1990. After an unsuccessful application by the applicant to change the trial venue, the fixture was moved to 30 May 1990. At the commencement of the trial the applicant sought to stay the proceedings and submitted to the trial judge that the prosecution was an abuse of process on the basis of delay coupled with the prejudice caused by the reversal of the CPS's decision not to prosecute. This submission was rejected by the trial judge on 1 June 1990.

On 6 June the applicant sought leave from the Divisional Court to apply for judicial review, in respect of the trial judge's refusal to stay proceedings. The Divisional Court adjourned the application, subject to the outcome of a related case concerning the jurisdiction of the Divisional Court in this area (it was held on 15 November 1990 in this related case, that the Divisional Court did have jurisdiction over such matters). On 11 July 1991 the application to the Divisional Court, for leave to apply for judicial review, was heard and leave was granted.

On 7 November 1991 the Divisional Court heard the substantive judicial review application and ruled that there had been no abuse of process.

The case was listed for mention on 14 February 1992, when the trial judge fixed the trial for 16 March 1992.

On 16 March 1992 the applicant's trial commenced, but the trial was adjourned to 19 March 1992 for the applicant to instruct counsel (the applicant had until that point chosen not to be represented by counsel).

On 19 March 1992, the applicant's trial resumed and he was represented by leading and junior counsel.

The applicant was convicted inter alia of robbery on 25 March 1992.

The applicant applied for leave to appeal against conviction and sentence on 1 May 1992. The applicant made two requests (4 November 1992 and 18 January 1993) for the consideration of the appeal to be delayed. On 28 February 1993 leave to appeal against conviction and sentence was refused by a single judge. On 25 March 1993 the applicant gave notice that he wished to renew his application before the full

court. In June 1993 and on 23 August 1993 the applicant's solicitors sought extensions of time, on the grounds of lack of funds. On 10 October 1993 the applicant requested a further deferral in order to instruct counsel. The application was listed to be heard on 19 April 1994 although, subsequent to counsel's written request, the case was relisted for 13 May 1994.

On 13 May 1994 the applicant was represented by counsel. His application for leave was refused by the full Court of Appeal. The Court of Appeal, agreeing with the single judge, considered that there was ample evidence to put before the jury, and found no material irregularity in the case.

COMPLAINTS

The applicant complains about the length of the criminal proceedings against him.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 October 1994 and registered on 9 December 1994.

On 28 February 1996 the Commission decided to communicate the applicant's complaint concerning the length of the criminal proceedings to the respondent Government and to declare the remainder of the application inadmissible.

The Government's written observations were submitted on 5 June 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 19 July 1996.

THE LAW

The applicant complains concerning the length of criminal proceedings against him for, inter alia, robbery.

The applicant was first questioned in relation to the robbery on 3 February 1988. He was convicted on 25 March 1992, and leave to appeal against his sentence and conviction was finally refused by the full Court of Appeal on 13 May 1994.

The applicant's complaints fall to be considered under Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention provides, so far as relevant, as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time ..."

The Government submit that the length of the criminal proceedings, assessed overall, was not unreasonable, having regard to the fact that the proceedings went through two levels of jurisdiction and concerned a separate interlocutory stage.

The applicant submits that the length of the criminal proceedings against him was unreasonable in the circumstances.

The Commission recalls that the length of criminal proceedings is calculated from the time when the applicant's situation is affected by the proceedings against him (Eur. Court HR, Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, p. 24, para. 46 and

Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 33, para. 73).

In the present case the applicant was in a state of uncertainty as to whether he would be prosecuted, for some nine months after being questioned. He was then informed by the CPS that charges would not be pressed, only to have this decision reversed some eight months later. In these circumstances the Commission considers it appropriate to take the date of questioning on 3 February 1988 as the relevant commencement date, with regard to calculating the length of the criminal proceedings.

The proceedings were finally determined when the applicant was denied leave to appeal by the full Court of Appeal on 13 May 1994 (see above mentioned Eckle v. Germany judgment, p. 34, para. 76).

The full duration of the criminal proceedings was 6 years 3 months.

The Commission considers that, in the light of the criteria established in the case law of the organs of the Convention concerning "reasonable time" (complexity of the case, conduct of the parties and the conduct of the authorities dealing with the case), the remainder of the application raises serious issues of fact and law which cannot be resolved at the present stage of the examination of the application, but calls for an examination of the merits.

For these reasons, the Commission, by a majority,

DECLARES THE REMAINDER OF THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber