AS TO THE ADMISSIBILITY OF

Application No. 17365/90
by J.S.
against the United Kingdom

The European Commission of Human Rights sitting in private on
2 December 1991 the following members being present:

MM.C.A. NØRGAARD, President
J.A. FROWEIN
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
Mrs.G. H. THUNE
SirBasil HALL
Mrs.J. LIDDY
MM.L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection
of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 August 1990 by
J.S. against the United Kingdom and registered on 26 October 1990 under
file No. 17365/90;

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 in 1934 and resident in Gravesend. He is represented before the Commission by Mr. Brian Spiro, a solicitor practising in London.

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

In November 1982, the applicant, a director with Gallic Credit Investment Ltd. was suspended from his employment. The affairs of the company had become the subject of investigation by the German police in 1981. In December 1982, the company went into voluntary liquidation and the City of London police were called in to investigate its affairs. The police sent two officers to Germany in September 1984 to investigate the company's dealings with German companies. Neither officer understood German.

The applicant was interviewed on 19 April 1985 by the London police in respect of false invoices.

He was arrested on 24 October 1985 and interviewed. The decision to prosecute was taken in February 1986.

The applicant was arrested again on 9 April 1986 and charged with fraudulent trading, namely obtaining money by deception by inducing banks to advance money to two German companies, which were insolvent. The applicant was released on bail on 10 April 1986.

The committal proceedings (old-style) began on 13 October 1986 but were not completed until 4 May 1988, having taken 60 working days. The applicant was tried with a co-defendant. The trial began on 3 May 1989 and lasted 65 working days. At the beginning of the trial, the applicant's counsel applied to the court for the proceedings to be discontinued on the ground that the delay involved constituted an abuse of process. The judge rejected the application stating that the delay was the result of the complexity of the subject-matter which involved investigations in two countries and that there was no indication that the applicant would be prejudiced, since the evidence depended largely on documents rather than the recollection of witnesses. On 10 August 1989 he was convicted of two charges and sentenced to four years' imprisonment on charge 4, with one year's imprisonment on charge 3. A company director disqualification order of 10 years was imposed on him.

The applicant appealed against conviction and sentence. Following a hearing on 26-27 February 1990, his sentence was reduced to 21/2 years but his appeal against conviction dismissed. The applicant had complained before the court of appeal, inter alia, that the continuation of the proceedings was an abuse of process due to the length of time - 61/2 years - between the collapse of the company and his trial. On this point, the Court found the judge had correctly applied the proper criteria in assessing whether the possibility of a fair trial had been prejudiced by the delay. They therefore rejected this ground of appeal. On the applicant's appeal against sentence, the Court found as follows:

"Whilst we have taken the view that the learned judge was right in allowing this case to proceed despite the long lapse of time between the suspension of these two applicants and the trial, some 61/2 years, we must acknowledge that that length of time was not only extremely lengthy in regard to the waiting for trial, but also amounted to a very considerable punishment which has been hanging over [the applicant] for that lengthy period. Whilst the judge recognised that, we take the view that the sentences which were passed did not sufficiently recognise that those years had been years of anguish for the [applicant] and of suspense, not knowing what the outcome was going to be, and, so far as employment was concerned, being at a distinct disadvantage.

Clearly, the scale of these frauds was such as to demand an immediate sentence of imprisonment, but, in our judgment, the balance would be properly struck if the sentences were reduced in this way. So far as [the applicant] is concerned, the sentence on count 4 should be reduced from 4 years to 30 months, the sentence on count 3 remaining concurrent, making a sentence of 30 months in all. ..."

COMPLAINTS

The applicant complains under Article 3 of the Convention in that he was held for three months in Wandsworth Prison where conditions were squalid and inhuman.

He complains under Article 6 para. 1 of the Convention that he did not receive a fair trial as a result of the delay which exceeded a reasonable time. He complains under Article 6 para. 2 that he was presumed guilty by the police. He also complains under Article 6 para. 3 that there was no solicitor present during his interview with the

police in October 1985.

The applicant invokes Article 7 para. 1 of the Convention alleging that the maximum penalty for the offences was increased by legislation to 7 years retrospectively. He complains also that his phone was probably tapped and that police entered his home frightening his children contrary to Article 8 of the Convention. He complains that the judge interrupted him when he manifested his faith in the court-room, invoking Article 9 of the Convention, and that he had no effective remedy in respect of this complaint contrary to Article 13 of the Convention.

THE LAW

1. The applicant complains of the length of the proceedings brought against him. He invokes Article 6 para. 1 (Art. 6-1) of the Convention, which, in its first sentence, provides:

> "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. "

According to the jurisprudence of the Commission and the Court, a failure to observe the "reasonable time" requirement in Article 6 para. 1 (Art. 6-1) cannot, with regard to criminal proceedings, in principle be remedied simply by mitigation of sentence. The Court has, however, admitted that this general rule can be subject to exception when the national authorities have acknowledged either expressly or in substance the breach of the Conventon and afforded redress for it (Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 30, para. 66; see also No. 10232/83, Dec. 16.12.83, D.R. 35 p. 213).

In the present case the Court of Appeal acknowledged in its judgment of 27 February 1990 that the proceedings had been "extremely lengthy" and that this amounted to a "very considerable punishment hanging over [the applicant] for that lengthy period". The Commission considers that by these formulations the Court of Appeal, in substance, acknowledged a breach of Article 6 para. 1 (Art. 6-1). The Comission further considers that in the circumstances of the present case the reduction of sentence accorded on account of the length of the proceedings is measurable, and cannot, as in the Eckle case, simply be considered as an unverifiable declaration of good intent. The sole reason given for reducing the sentence was the length of the proceedings.

In these particular circumstances, the applicant can no longer claim to be a victim of a violation of his right under Article 6 para. 1 (Art. 6-1) of the Convention to a hearing within a reasonable time, and this complaint must, therefore, be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains that there was no solicitor present during his interview with the police in October 1985. He invokes Article 6 para. 3 (Art. 6-3) of the Convention.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken". In the absence of any relevant decision, the period runs from the date of the act complained of.

In the present case the act complained of occurred in October 1985, whereas the application was submitted to the Commission on 4 August 1990, that is, more than six months after the date of this act. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that 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.

3.The applicant further complains that he was subjected to a retroactive penalty in that he was imprisoned for a period of - ultimately - 21/2 years in respect of offences stated to have been committed between 23 June 1980 and 19 November 1982 although at the time of commission, the maximum penalty was only two years. He alleges a violation of Article 7 (Art. 7) of the Convention in this respect.

However, Section 80 of the Companies Act 1980, which increased the maximum penalty for fraudulent trading to seven years' imprisonment or a fine, entered into force on 23 June 1980. Accordingly, the applicant was not subjected to a retroactive penalty, and this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant also complains that he was presumed guilty by the police, that his telephone may have been tapped, that the police entered his home, that the judge did not respect his manifestations of his religion and that he had no remedy in respect of that lack of respect. He invokes Articles 6 para. 2, 8, 9 and 13 (Art. 6-2, 8, 9, 13) of the Convention.

The Commission has examined these complaints as they have been submitted by the applicant. However, after considering the case as a whole, the Commission finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

It follows that this part of 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 by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)