AS TO THE ADMISSIBILITY OF

Application No. 27007/95
by Jeanine SPECKMAN
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.S. GÖZÜBÜYÜK
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 24 November 1994 by Jeanine SPECKMAN against the United Kingdom and registered on 7 April 1995 under file No. 27007/95;

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 applicant is a British and French citizen born in 1950. Before the Commission she is represented by Mr. David Janes, solicitor of Janes Solicitors, London. The facts of the case as submitted by the applicant may be summarised as follows.

On 12 June 1991 at the Central Criminal Court, the applicant and her co-defendant, Mr. Daghir, were convicted after a six week trial of a single count of conspiracy to export goods (40 electrical capacitors) with intent to evade a prohibition on export imposed by the Export of Goods (Control) Order 1989. The applicant was granted leave to appeal on 26 April 1993. On 23 May 1994 the appeal was allowed and her conviction quashed on the ground that the trial judge had misdirected the jury. On 25 May 1994, the Court of Appeal gave its reasons.

On 5 February 1989, the applicant took up employment with an English company called Euromac (London) Limited ("Euromac"), an import/export company trading mostly with Iraq. In April 1989 she took over as exports manager. In June 1989, pursuant to negotiations that had taken place in the preceding 9 months, Euromac entered into a binding agreement with the Alquaqaa organisation in Iraq to supply electrical capacitors, electrical components used in a wide variety of applications and devices. Some weeks later the purchase price was paid

into Euromac's account.

The preceding negotiations had established that the capacitors would be supplied by an American capacitor manufacturer, CSI Capacitors ("CSI"), based in California. On receipt of the specifications on 6 September 1988, the Chairman of CSI, Mr. Kowalski, suspecting that the capacitors might be intended for use in a nuclear triggering device, contacted Mr. Supnick of the United States Customs. At that stage a decision was taken not to refuse to deal with the Iraqis but instead, to go along with them and indeed to indicate to Euromac and through Euromac to the Iraqis that CSI were willing to supply the capacitors. Once that decision had been taken almost everything done by Mr. Kowalski was done under the control of Mr. Supnick. It appears from the domestic court judgment that telephone conversations between the relevant parties were recorded and used in evidence at the trial.

On 7 April 1989, the applicant's predecessor who had been dealing with the negotiations, left Euromac. The applicant states that just before he left he informed the Americans that the project was terminated. Ten days later Mr. Charlton who worked for CSI's UK agent, Walmore Electronics Limited, faxed Mr. Kowalski to say that the project was terminated.

The applicant claims that from this point on Mr. Kowalski, under the direction of Mr. Supnick, urgently telephoned and faxed her to see what she could do to revive the order, of which at that time she had no knowledge. She claims that the objective of the Americans was to lure the personnel of Euromac and engineers from the Iraqi establishment into the U.S.A. or, failing that, into a meeting at which the readiness of the applicant to be involved in the illegal export scheme could be tested, even though at that point, the U.S agent had no reason to suppose that the applicant or any of the personnel at Euromac were contemplating or disposed to carry out an illegal export or were even aware that there was anything out of the ordinary about the capacitors.

The deal was not terminated because on 17 April 1989, Mr. Kowalski telexed Euromac and asked for a drawing of the capacitors that were required. On the same day Mr. Kowalski telephoned Mr. Daghir, the managing director of Euromac, who told him that the applicant was going to Baghdad and that she would try and find out what was happening. On 24 April the applicant telexed Alquaqaa and asked if they were still interested in the capacitors. By telex in reply sent on the same day Alquaqaa confirmed that they were still interested and that the applicant would get the necessary information when she came to Baghdad.

On 7 June 1989, after the applicant had returned from Baghdad, she telexed Mr. Kowalski with the Iraqis latest requirements. On 19 June 1989, the official order arrived at Euromac for 100 capacitors to be sent to Heathrow and from there by Iraqi Airways to Baghdad. On 24 July 1989, Mr. Kowalski, at Mr. Supnick's direction, sent a fax to the applicant suggesting a meeting in London in September or October, which according to the evidence given by Mr. Supnick was intended to finalise precisely what capacitors the Iraqis required and what the details of the specifications were.

That meeting was held on 11 September 1989 and was attended by Mr. Kowalski, Mr. Supnick, posing as Mr. Saunders on behalf of CSI, Mr. Daghir and the applicant and two Iraqi engineers, Mr. Walhid Ahmed and Mr. Karim. At the meeting Mr. Walhid Ahmed signed a contract with Mr. Kowalski for 85 capacitors, 45 of which were standard or close to standard types, the remaining 40, the subject of the trial, were of a special design. Recordings of that meeting showed that those involved had two concerns, either to describe the capacitors so that they could be exported from the United Kingdom to Iraq, or to conceal the fact that Iraq was the end user.

Between September 1989 and February 1990 there were numerous phone conversations, faxes and telexes, some of which involved the applicant and many of which were concerned with how to get round the licensing system in the United Kingdom and the United States, in particular with the question of how the capacitors were to be described and arrangements for their delivery to Iraq. On 10 January 1990 Mr. Supnick phoned Mr. Daghir and they agreed that the capacitors should be described as being for use in air conditioning systems. On 24 January 1990, Alquaqaa telexed CSI to say that the capacitors were to be used for a CO2 laser system. On 16 February 1990, the applicant sent Mr. Supnick an end user certificate saying that the capacitors were required for a CO2 laser system and that the goods were to be shipped to Euromac in the United Kingdom. On 21 February 1990, the applicant faxed a letter to CSI saying that the capacitors should be shipped directly to Iraq. Mr. Kowalski faxed a reply summarising what had gone on since September 1989 and saying in effect that the goods could not be shipped direct.

On 2 March 1990, the applicant had a phone conversation with Mr. Supnick in which she pointed out that "You can't describe the capacitors as being for air conditioning when the end user certificate says CO2 laser equipment". It was at this point that Mr. Supnick told her in terms that the capacitors were required for detonators. The applicant said that she was very worried about the whole business and said "Daghir might get a medal in Baghdad but someone in England might go to jail."

Just after the phone call the applicant sent a telex to Mr. Daghir in Baghdad saying :

> "Our invoice has to show the same description of goods as theirs. They say you asked them to state the goods as capacitors for air conditioning system, which is what they did, but the end user certificate is for CO2 laser systems. This has to appear in the description. It certainly would have been preferable for all of us to have left it to the former since they are going to produce another certificate. Can they not state sole use of air conditioning instead of CO2 laser system? Please confirm if this can be done or not as soon as possible."

By a phone call on 15 March 1990, the applicant asked Mr. Supnick not to put her name on the waybill.

On 20 March 1990 the capacitors arrived at Heathrow marked with a CSI and Transworld label. Customs officials substituted the capacitors for dummies packed in identical boxes with identical labels. On 22 March 1990 the applicant faxed Mr. Supnick to ask him what group or category the capacitors belonged to for the purposes of import duty and for confirmation that this classification would not cause problems as regards re-export.

On 28 March 1990 boxes containing the dummy capacitors with "Salah air conditioning factory" marked on them were taken to terminal 3 at Heathrow airport by a Mr. Amyuni. The boxes were seized by Customs and Excise and Mr. Amyuni was arrested.

The applicant was arrested at 10.17 am the same morning when she said "I wish I could tell you something but it could be held against me." In her interview after her arrest, she stated that she knew nothing of the attempted re-export that took place on 28 March 1990.

The applicant's trial began at the Central Criminal Court on 21 April 1991 before Judge Denison and a jury. At the outset of the trial and before the hearing of the evidence, the submission was made and rejected by the trial judge that the activities of Mr. Supnick constituted an entrapment by an agent provocateur and that his evidence

should be excluded from the trial in the exercise of the judge's discretion under Section 78 of the Police and Criminal Evidence Act 1984 as having an adverse effect on the fairness of the proceedings. The trial judge concluded inter alia (1) that an undercover operation which produced evidence of the applicant's complicity in the offence charged could not by itself be a ground for refusing to admit the evidence; (2) that neither Mr. Supnick not Mr. Kowolski could be said to have acted as an agent provocateur nor did they entrap the applicant into committing the offence with which she was charged, and (3) that the methods used to obtain the evidence were in no sense improper and could not be said adversely to have affected the fairness of the proceedings.

On 13 June 1991, the applicant was found guilty and sentenced to 18 months imprisonment of which she served six months. Her co-defendant was sentenced to 5 years imprisonment.

On 23 May 1994, the applicant's appeal was allowed on the basis that the decision of the prosecution to put its case exclusively on the basis that the capacitors were intended for nuclear purposes required a clear direction from the judge as to the consequences that flowed from that decision. Nowhere in the summing up did the judge tell the jury that the prosecution had to prove that these capacitors were designed for use in nuclear bombs and that unless they were sure of that they must acquit. While a large number of grounds of appeal were argued, the Court of Appeal did not consider them, having found that the first ground of appeal was sufficient to justify their allowing the appeal.

COMPLAINTS

The applicant complains that her right to respect for her private life was persistently ignored by Mr. Supnick, of U.S. Customs who should be viewed as the joint agent of the United Kingdom and United States Governments. She claims that Article 8 guarantees protection against unwarranted entrapment and that there is no such protection in English law. Further she claims that the absence of any law in the United Kingdom to regulate or provide protection against the activities of State agents fails to protect the individual's private life from interference by the State without exceptional and necessary cause. It is claimed that the fact that a judge has a discretion to exclude evidence obtained by an agent provocateur or in the course of entrapment does not mean that the violation of the applicant's private life took place according to law or with the minimum necessary protection and that she has been deprived of a remedy under Article 13, in particular the right to damages.

The applicant initially alleged that the proceedings had been unfair, but withdrew the complaints as any unfairness was remedied by her subsequent acquittal. She nevertheless complains that the lack of redress in English law for the damage caused as a result of the alleged entrapment is in violation of Article 6 and Article 13 of the Convention. In particular, she claims that she has been deprived of the right to compensation for her prosecution, imprisonment, the quashing of her conviction and the breach of Article 8, contending that her right to be presumed innocent under Article 6 para. 2, includes the right to compensation and redress for loss of liberty where it has occurred because the hearing has miscarried. She claims that the availability of compensation in UK law for those whose convictions are quashed on the basis of new evidence that tends to show that the conviction was unsafe but not in respect of convictions that are quashed because of material irregularities in the course of the trial that may have led the jury to a false conclusion, violates her right not to be discriminated against under Article 14.

She claims that the actions of Mr. Supnick and U.K. Customs violated her rights under Article 3 of the Convention in that she was

arrested, detained, charged, prosecuted and held up to public shame when the authorities knew that she had been deliberately ensnared and could not have contemplated the commission of any offence before the idea had been implanted in her mind.

THE LAW

1. The applicant complains that by instructing Mr. Supnik to conduct an undercover operation and, in particular to arrange her entrapment, the United Kingdom authorities, acting in conjunction with United States Customs, violated her right to respect for private life under Article 8 (Art. 8) of the Convention and that she has no effective remedy, in violation of Article 13 (Art. 13).

Article 8 (Art. 8) of the Convention provides so far as relevant:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence."

The Commission recalls the finding of the European Court of Human Rights in Lüdi v. Switzerland that the activities of an undercover agent in the context of a deal relating to 5kg of cocaine, did not alone or combination with telephone interception, affect private life within the meaning of Article 8 (Art. 8) (Eur. Court H.R., judgment of 15 June 1992, Series A no. 238, p. 19, para. 40).

The Commission notes that the actions of Mr. Supnick and the Customs authorities took place in the context of a business deal for the purchase of 85 capacitors, 40 of which were believed to be intended for use in a nuclear weapon. The Commission is therefore of the view that, assuming the responsibilities of the State were engaged (which the Commission has not in the circumstances found it necessary to determine) the activities of Mr. Supnick or the authorities did not in any event affect private life within the meaning of Article 8 (Art. 8).

The Commission recalls that Article 13 (Art. 13) of the Convention requires a remedy in domestic law only in respect of grievances that can be regarded as "arguable" in terms of the Convention (Eur. Court H.R. Powell and Rayner judgment of 21 February 1990, Series A no. 172, p. 14, para. 31). For the reasons given above the Commission does not consider the applicant to have an arguable claim in respect of this part of the application.

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

2. The applicant complains that she has been deprived of the right to be presumed innocent under Article 6 para. 2 (Art. 6-2) because she is unable to claim, on the basis that her conviction was due to a misdirection of the judge to the jury, compensation for her arrest and detention. She further claims that she is deprived of a remedy in violation of Article 13 (Art. 13), and that the availability of compensation where a conviction is quashed on the basis of new evidence but not on acquittal violates Article 14 (Art. 14) of the Convention.

Article 6 (Art. 6), insofar as relevant, provides as follows:

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

The Commission recalls the judgment of the European Court of Human Rights in Masson and Van Zon v. Netherlands where the Court held that the Convention does not grant a person "charged with a criminal offence" but subsequently acquitted a right either to reimbursement of costs incurred in the course of criminal proceedings against him, or to compensation for lawful restrictions on his liberty and that such

a right cannot be derived from Article 6 para. 2 (Art. 6-2) nor from any other provision of the Convention or its Protocols (cf. Eur. Court H.R., judgment of 28 September 1995, Series A no. 327, para. 49).

The Commission notes that the applicant took no action as regards the lawfulness of her detention and does not claim that she was unlawfully detained. Indeed, the applicant accepts that she is prevented by the six months rule from bringing any complaints under Article 5 (Art. 5) of the Convention. The Commission further notes that applicant was acquitted on 23 May 1994, on the grounds that the judge had not given a specific direction to the jury as regards the decision of the prosecution to prosecute the case on the basis that the capacitors were intended for use in nuclear weapons and not merely for military use. The misdirection did not render the arrest, detention or conviction unlawful under domestic law or within the terms of the Convention.

In the circumstances, the Commission considers that Article 6 para. 2 (Art. 6-2) does not accord the applicant a right to compensation for her arrest and detention.

As to the complaint under Article 13 (Art. 13) of the Convention, for the reasons given above, the Commission does not consider that the applicant has an arguable claim in respect of this part of the application.

As to the complaint that compensation is available to a defendant whose conviction is quashed after new evidence, but not where a defendant is acquitted on appeal, the Commission recalls that Article 14 (Art. 14) of the Convention only prohibits discrimination with respect to the enjoyment of the rights and freedoms set forth in the Convention (cf, for example, No. 11278/84, Dec.1.7.85, D.R. 43, p. 216). In the absence of a right to compensation under the Convention, Article 14 (Art. 14) has no application.

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

3. The applicant complains of degrading treatment by the authorities under Article 3 (Art. 3) of the Convention. The Commission does not consider that the circumstances of the case amount to degrading treatment within the meaning of Article 3 (Art. 3) of the Convention. Her complaint under Article 3 (Art. 3) of the Convention must therefore be rejected as 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)