FIRST CHAMBER
AS TO THE ADMISSIBILITY OF

Application No. 17259/90
by L.T.
against the United Kingdom

The European Commission of Human Rights sitting in private on 1 April 1992, the following members being present:

MM. J.A. FROWEIN, President of the First Chamber
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First Chamber
assisted by Mrs. S. DOLLE

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

Having regard to the application introduced on 18 May 1990 by L.T. against the United Kingdom and registered on 4 October 1992 under file No. 17259/90 ;

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 citizen of the United Kingdom, born in 1953 and detained in H.M. Prison Long Lartin, Worcestershire.

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

In the judgment of the Full Court of Appeal in this case the following is stated: "The applicant was convicted of murder at Lewes Crown Court on 12 July 1988, and sentenced to life imprisonment. The victim was a 57 year old lady. At 4 o'clock on the afternoon of 3 April 1987, her daughter went to her flat to visit her. There was no reply. Looking through the window the daughter saw her mother hanging from the hot tap of the hand basin in the bathroom by a belt from her raincoat, which was tied tightly round her neck. She had been asphyxiated and great violence had been used upon her. She had been sexually assaulted. There was medical evidence as to violence and also some evidence, although not of a very precise nature, from the doctors as to the time of death. In the deceased's living room the police found a packet of cigarettes bearing the applicant's fingerprints and a box of matches which came from the public house at which the applicant was a regular visitor but which the deceased did not frequent. The applicant's fingerprints were also found on a door frame in the deceased's house, and fibres found on the deceased's clothing

matched those on the jumper which the applicant had been wearing at the relevant time. The applicant confessed to three people that he had murdered the deceased, the first two confessions being made before the deceased's body was discovered. In interviews <with the police> the applicant denied killing the deceased. He said that his confessions were of pure fantasy and a sick joke. He explained the presence of his fingerprints by saying that he had been to the house on one occasion and must have left his fingerprints on the door frame. He said that he had parted with a packet of cigarettes and some matches at the request of the deceased. So far as the fibres were concerned, he had an explanation for them, namely, that the sweater he was wearing had been worn by somebody else briefly and may have come in contact with the deceased's clothing on that occasion. The main plank of the defence case was the calling of some witnesses who claimed to have seen the deceased alive after the time when the applicant was said to have confessed to murdering her. The principal ground of appeal was that the learned Judge did not properly direct the jury as to the timings and, particularly, as to the relationship between the defence evidence and the evidence given by the doctors as to possible time of death. There <was> also complaint that the learned Judge did not correctly direct the jury as to the standard of proof."

The applicant was refused leave to appeal by a single judge and then by the Full Court of Appeal on 12 March 1990. The latter held, after considering the grounds of appeal submitted personally by the applicant as well as grounds drafted by his counsel, that there was no merit in the appeal application. The applicant's ancillary applications were therefore also rejected, namely his request to be present at the appeal hearing and his request for further legal aid. He had been legally aided up to the submission of the grounds of appeal.

COMPLAINTS

The applicant complains that his arrest, conviction and sentence were wrongful and that his trial and leave to appeal hearings were unfair and biased. In particular he complains that during the proceedings the law of evidence was corrupted and perverted by the judges, allegedly by omissions, distortions and misrepresentations of the evidence and the facts of the case. He also complains that he was refused leave to appeal, legal aid and leave to call witnesses for an appeal. The applicant invokes Article 5 para. 1 (a) and (c) and para. 4, Article 6 paras. 1, 2 and 3 (particularly subparagraph (d)), and Articles 14, 25 and 60 of the Convention.

THE LAW

The applicant alleges that he was wrongfully arrested, convicted and sentenced and that, as a result, he suffered breaches of Articles 5 and 6 (Art. 5, 6) of the Convention during the trial and leave to appeal proceedings.

The relevant parts of Articles 5 and 6 (Art. 5, 6) of the Convention provide as follows:

Article 5 (Art. 5)

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

...

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

Article 6 (Art. 6)

"1. In the determination 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;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;..."

The Commission has examined the case-file as it has been submitted by the applicant, but finds nothing in it which might cast doubt on the lawfulness of the applicant's arrest, in accordance with Article 5 para. 1 (c) (Art. 5-1-c) of the Convention, or the lawfulness of his detention after conviction by a competent court (by the Lewes Crown Court on 12 July 1988), in accordance with Article 5 para.1 (a) (Art. 5-1-a) of the Convention. The applicant's right under Article 5 para. 4 (Art. 5-1) of the Convention to challenge the lawfulness of his detention was ensured by the trial and leave to appeal processes themselves (cf. Eur. Court H.R., De Wilde, Ooms and Versyp judgment of 18 November 1970, Series A No. 14, p. 40, para. 76).

The Commission also finds that the applicant has not submitted any evidence to substantiate his claim that he did not have a fair or impartial trial pursuant to Article 6 para. 1 (Art. 6-1) of the Convention. There is no suggestion that the applicant or his representatives did not have a full opportunity to put the defence case or challenge that of the prosecution. The summing up of the evidence by the trial judge to the jury, which summary was strongly criticised by the applicant, on the face of it shows no bias by the judge, given the nature and weight of the evidence against the applicant.

As regards the refusal of the applicant's application for leave to appeal, the Commission refers to the special nature of these proceedings described by the European Court of Human Rights in its Monnell and Morris judgment. Such applications are normally dealt with

on the basis of the trial papers and written grounds of appeal, without hearing oral argument from the parties. There is no right to legal aid in order to appear or to be represented before the Court of Appeal, although legal aid at the trial will normally be extended, as in this case, for the preparation of the grounds of appeal for the leave to appeal application. On an application for leave to appeal the Court of Appeal does not re-hear the case on the facts and no witnesses are called, even if the grounds of appeal involve questions of fact. The issue for decision in such proceedings is whether the applicant has demonstrated the existence of arguable grounds which would justify hearing an appeal. The principle of equality of arms is respected in that the prosecution, like the accused, is not represented at these proceedings (Eur. Court H.R., Monnell and Morris judgment of 2 March 1987, Series A No. 115, pp. 12-14 and 22-24, paras. 23-27, 57 and 62).

It seems that the applicant's leave to appeal application was disposed of in the manner described above. The Commission finds that the refusal of leave to appeal itself raises no issue under Article 6 (Art. 6) of the Convention. Moreover, it finds nothing untoward in the subsequent refusal of legal aid, the proceedings having ended. The Commission notes that the applicant had legal aid for the written presentation of his leave to appeal application. The subsequent refusal did not, therefore, infringe Article 6 para. 3 (c) (Art. 6-3-c) of the Convention. The applicant also complains that the Court of Appeal refused leave to hear witnesses, but the papers submitted by the applicant do not show that any request to hear specific witnesses was made.

In the light of these considerations and the particular circumstances of the case, the Commission finds that the applicant's complaints under Articles 5 and 6 (Art. 5, 6) of the Convention are unsubstantiated. 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.

Finally the applicant complains of discrimination, contrary to Article 14 (Art. 14) of the Convention, as well as an infringement of the right of individual petition under Article 25 (Art. 25). He also invokes Article 60 of the Convention. However, the Commission finds that the applicant's complaints under these provisions are also unsubstantiated and therefore rejects them as being 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. de SALVIA) — (J.A. FROWEIN)