AS TO THE ADMISSIBILITY OF

Application No. 13736/88
by Kevin and Beryl TAYLOR
against the United Kingdom

The European Commission of Human Rights sitting in private on 10 November 1989, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
G. BATLINER
J. CAMPINOS
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 12 January 1988 by Kevin and Beryl TAYLOR against the United Kingdom and registered on 7 April 1988 under file No. 13736/88;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicants, Kevin and Beryl Taylor, who are husband and wife, are citizens of the United Kingdom born in 1932 and 1938 respectively. They are resident in Manchester, where together they own and manage a group of property development companies. The facts of the case, as submitted by the applicants, may be summarised as follows:

On 12 March 1986, orders of access to the bank accounts of the applicants and of their businesses were granted by the Recorder of Manchester under Section 9 of the Police and Criminal Evidence Act 1984 (the 1984 Act) upon application inter alia by A. T. and S., senior officers of the Greater Manchester Police, for the expressed purpose of investigating a suspected bank fraud. On 9 May 1986, search warrants were issued for the same purpose by a stipendiary Magistrate under Section 8 of the 1984 Act, inter alia against the business premises of the applicants and of their solicitors and against their home. The search of the applicants' home was conducted on the same day by a detective Inspector of the Greater Manchester Police Special Branch who was, at that time, liaison officer with MI5, the British Internal Security Service. During the course of this search, certain of the applicants' property was seized, including family photograph albums.

The applicants consider that the real purpose for which the above orders and warrants were sought was not for the expressed intention of investigating a bank fraud, but for the concealed purpose of discrediting Mr. John Stalker, the then Deputy Chief Constable of the Greater Manchester Police and a friend of the applicants, with a view to removing him from his enquiry into allegations of a "shoot to kill" policy on the part of the Royal Ulster Constabulary in Northern Ireland. That this was the dominant concern of the police officers investigating the applicants' activities is, in their view, confirmed by the evidence in fact obtained, namely details of the first applicant's financial transactions at the time he was in the company of Mr. Stalker together with personal photographs depicting Mr. Stalker in the company of the applicants and their friends, some of whom had previous minor convictions.

This evidence formed the basis of a subsequent decision by senior police officers to remove Mr. Stalker from the enquiry into the Royal Ulster Constabulary and to commence an investigation into the possiblity of misconduct on his part in the exercise of his duties. He was later cleared of the allegations of misconduct.

Section 16 (8) of the 1984 Act provides as follows:

> "A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued."

Sections 19 to 21 of the 1984 Act provide for the power of seizure by any constable lawfully on any premises. Section 19 (3) provides as follows:

> "(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing -
>
> a) that it is evidence in relation to an offence which he is investigating or any other offence; and
>
> b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed."

These provisions are reflected in the codes of practice issued by the Secretary of State in connection with the search of premises and the seizure of property. Under Section 67 of the 1984 Act, a police officer is liable to disciplinary proceedings for a failure to comply with any provision of this code, though such failure does not of itself render him liable to any criminal or civil proceedings.

The applicants were subsequently advised by counsel that before pursuing the available remedies in law for the unlawful granting or use of search warrants, namely trespass to property and to goods, wrongful detention of goods and abuse of power, the proper course of action was to apply for discovery of relevant documents pursuant to Order 29 Rule 7A of the Rules of the Supreme Court as provided for by Section 33 of the Supreme Court Act 1981.

On 23 September 1986, the first applicant issued an originating summons in the Chancery Division of the High Court against A. and the Greater Manchester Police Authority for an order that they should disclose all the documents which supported the granting of the search warrants obtained on 9 May 1986. On 15 October 1986, Mr. Justice Scott dismissed the suit on the grounds that public immunity privilege attached to the police enquiries at that time. After noting that a decision as to whether there would be a prosecution appeared imminent, he held as follows:

"If it turns out that a prosecution for the offence referred to in the search warrants is not to be instituted, then I think there would be no continuing argument that public interest immunity attached to the information or informations. If there is a prosecution and it fails, the same will apply. It would apply, for that matter, if a prosecution were instituted and succeeded, but it might then no longer be a practical question.

...[Counsel for the applicant] addressed me on the footing that without discovery of the sort that he seeks, proceedings by his client against the first defendant, based upon the improper obtaining of the search warrant, and, I suppose, on the excessive execution of the search warrant, could not be commenced.

... Of course, until it is known whether or not there is going to be a prosecution for conspiracy to defraud there is perhaps not much point in commencing a civil action; if there were a prosecution the civil action would simply have to be stayed until the prosecution had run its course. But subject to that I find myself unpersuaded that there are ... difficulties in the way of commencement of proceedings ..."

The applicants also initiated a private prosecution at the suit of one of their companies against A, T and S at this time. On 14 October 1986, a Magistrate in Bury issued summonses against A, T and S, requiring them to answer the applicants' allegation that between 12 March and 9 May 1986 they had conspired together to obtain by false evidence the above orders and warrants in that the conditions for the granting of these orders and warrants were sworn to have existed when in truth such conditions were and could not be fulfilled and that they were sought with the main purpose of discrediting Mr. Stalker.

Leave was subsequently granted to A, T and S to take proceedings for judicial review of the decision to issue the summonses. On 13 July 1987, the High Court granted relief to the applicants in those proceedings and the summonses were quashed on the grounds that the manner in which they had been obtained was an abuse of process in that the Magistrate had not been informed of the civil action for disclosure of documents then pending before the Chancery Division. The court further refused to certify a point of law of public importance to the House of Lords concerning the relevance of the finding in those civil proceedings to the criminal prosecution against A, T and S.

On 30 September 1987, the first applicant was charged with conspiracy to obtain pecuniary advantages under Section 15 of the Theft Act 1968. The applicants consider that these proceedings, which are also still pending, form part of a "trawling" investigation in a continuing campaign to denigrate and discredit the first applicant in order to justify the actions taken against Mr. Stalker in 1986.

On 9 February 1988, the High Court dismissed a further and separate action brought by the applicants for leave to challenge the original decision of 12 March 1986 to issue the access orders to the applicants' bank accounts, although on this occasion it did certify a point of law of public importance and an application for leave to appeal to the House of Lords is still pending.

COMPLAINTS

1. The applicants complain that the search warrants issued in respect of their home and business premises were used for the improper purpose of discrediting a senior police officer in the lawful exercise

of his duties. Tbey complain in particular of the taking of family photographs from their home on 9 May 1986. They invoke Article 8 of the Convention and Article 1 of Protocol No. 1 in this connection.

2. The applicants complain further that they are precluded from testing their allegations of perjury and conspiracy against the police officers concerned as a result of the High Court decision of 13 July 1987 quashing the summonses issued against those officers and refusing to allow the question to be considered further by the House of Lords. They invoke Articles 6 and 13 of the Convention in this connection.

THE LAW

1. The applicants first complain that the search warrants authorising a search of their home and business premises were used for an improper purpose, namely to discredit a senior police officer. They further complain that certain family items were taken from their home in the course of the search. They allege a breach of Article 8 (Art. 8) of the Convention and Article 1 of Protocol No. 1 (P1-1).

However, the Commission is not required to decide whether or not the facts alleged by the applicants disclose any appearance of a violation of this provision as, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case it is clear from the judgment of Mr. Justice Scott in the abortive discovery proceedings that actions in tort against the police would lie in respect of the search and the seizure of documents and property. In the course of such proceedings the applicants could have argued that the search warrants were improperly obtained and executed. It is true that any proceedings instituted may have had to be stayed pending the criminal proceedings which were ultimately set in motion by the charge of 30 September 1987. As Mr. Justice Scott found, however, a request for discovery in civil proceedings in tort could not, after the criminal proceedings, be met by a defence of public interest imunity. The applicants' claims could therefore be considered at that stage.

It follows that the applicants have not complied with the condition as to the exhaustion of domestic remedies and this complaint must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicants also complain under Articles 6 and 13 (Art. 6, 13) of the Convention that, as a result of the High Court decision of 13 July 1987, they are prevented from bringing criminal proceedings against the police officers concerned.

In this respect the Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention guarantees a right of access to court in respect of disputes concerning civil rights and obligations. However, it does not guarantee the right to bring criminal proceedings (see e.g., No. 7116/75, Dec. 4.10.76, D.R. 7 p. 91). It follows that the applicants' complaint under Article 6 para. 1 (Art. 6-1) of the Convention is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. Similarly, since Article 13 (Art. 13) can only be invoked in connection with a right guaranteed by the Convention, this complaint falls to be rejected on the same grounds.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission	President of the Commission
(H. C. KRÜGER)	(C. A. NØRGAARD)