AS TO THE ADMISSIBILITY OF

Application No. 26269/95
by Thomas THOMPSON
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 18 January 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 6 January 1995 by Thomas Thompson against the United Kingdom and registered on 24 January 1995 under file No. 26269/95;

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

The applicant, born in 1964, is an Irish national and has his permanent address in Belfast, Northern Ireland. He is currently in prison. Before the Commission the applicant is represented by Mr. S. Leonard, a solicitor practising in Belfast.

In the early hours of 4 March 1991 the applicant was arrested while passing through a road check point with his car together with three other young men. The police found in the car a replica pistol, two ski masks and a crow bar.

The applicant and the other passengers in the car were charged with a robbery which had been committed about two hours prior to their arrest.

When questioned by the police, the applicant explained that he and his three companions had spent the whole evening together at M.'s house drinking and listening to music. M. was one of the accomplices.

On 1 June 1992 the applicant, the other three persons arrested

with him, and a fourth co-accused were arraigned. Two of the applicant's co-accused pleaded guilty and were convicted upon their pleas. The applicant pleaded not guilty. He was legally represented.

At the trial the applicant confirmed that he had spent the whole evening of 3/4 March 1991 in Mr. and Mrs. M.'s house, but stated that the other three co-accused had borrowed his car and had been away for several hours.

The convictions of the two accomplices who had pleaded guilty were admitted in evidence at the applicant's trial.

On 22 September 1992 the applicant was convicted of robbery. The court relied on the convictions of the applicant's accomplices who pleaded guilty as evidence that they had been two of the four robbers. The court also disbelieved the account given by the applicant of his whereabouts in the evening of the events at issue and found that he had participated in the robbery.

The applicant appealed against this judgment alleging inter alia that the admission of his accomplices' convictions as evidence against him had been contrary to domestic law and to the Convention. Thus, as a result of this admission, the applicant was deprived of the opportunity to cross examine the co-accused on the issues, in particular, whether they had committed a robbery and, if they had, whether the applicant had been with them. Also, the admission of the convictions in evidence affected the applicant's trial adversely because his participation in the robbery was implied in the decisions given in his accomplices' cases.

The appeal was dismissed on 27 May 1994. The Court of Appeal found inter alia that the admission of the convictions in evidence was lawful under domestic law and that it did not affect the fairness of the proceedings. Thus, this evidence was used by the court in the applicant's case only as regards the factual issue whether the convicted persons, not the applicant, had committed a robbery. As regards the alleged lack of opportunity to cross-examine the accomplices, the Court of Appeal noted that the applicant's lawyer had withdrawn the contention that he would cross-examine the two convicted on the issue whether they had committed a robbery. In respect of the other point, namely cross examination on the issue whether the applicant had been together with the persons who had pleaded guilty, the Court found that the applicant had been free to call his accomplices as witnesses and to examine them.

The applicant's petition for leave to appeal to the House of Lords was refused on 15 July 1994.

COMPLAINTS

The applicant complains that the courts admitted as evidence against him the convictions of his accomplices. This was in breach of domestic law and also resulted in the following violations of Article 6 of the Convention:

- contrary to Article 6 para. 3(a) the applicant was not informed fully of the accusations against him because he was not aware of the evidence brought against his accomplices;

- contrary to Article 6(3)(d) he was unable to compel the co-accused to submit themselves to cross examination;

- contrary to Article 6 para. 2 he was convicted on the basis of guilt by association as he could not have been convicted but for the pleas of the co-accused.

THE LAW

The applicant complains under Article 6 (Art. 6) of the Convention that the criminal proceedings against him involved breaches of his defence rights and were unfair.

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

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> a. to be informed promptly ... and in detail, of the nature and cause of the accusation against him;
>
> ...
>
> 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 recalls that the admissibility of evidence is primarily a matter for regulation by national law, and that, as a rule, it is for the national courts to assess the evidence before them. The Convention organs' task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see Eur. Court H.R., Windisch judgment of 27 September 1990, Series A no. 186, p. 10 para. 25).

The Commission further recalls that the requirements of paragraphs 2 and 3 of Article 6 (Art. 6-2, 6-3) of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1. In criminal cases the whole matter of the taking and presentation of evidence must be looked at in the light of paragraphs 2 and 3 of Article 6 (Art. 6-2, 6-3) (cf. Eur. Court H.R., Barberà and others judgment of 6 December 1988, Series A no. 146, p. 33 paras. 67, 76, 78).

Under paragraph 2 of Article 6 (Art. 6-2) it is imperative that a court should not start the examination of a case with the preconceived idea that the accused has committed the offence charged. Also, it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defence. Paragraph 1 taken together with paragraph 3 of Article 6 (Art. 6-3) require inter alia that the accused be able to have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf (see Appl. no. 7628/76, dec. 9.5.77, D.R. 9 p. 169; Eur. Court H.R., Barberà and others judgment, loc. cit., p. 33, 34 paras. 77 - 78).

In the present case the Commission finds no indication that the applicant, who was legally represented, could not sufficiently put forward his point of view, or that the proceedings at issue were otherwise unfairly conducted. In particular, it does not appear that the admission in evidence of the convictions of the applicant's accomplices was unlawful or has affected adversely the fairness of the proceedings.

Thus, the Commission notes that the applicant was informed of the cause of the accusation against him and, in particular, of the material facts alleged. Furthermore, the Court of Appeal found that the applicant had been free to request the accomplices' examination as

witnesses on the issue of his participation in the robbery and that he did not seek to examine them on the issue whether they had committed a robbery. Moreover, the courts relied on the convictions only insofar as they concerned the guilt of the convicted persons and not as regards the guilt of the applicant.

It follows that the application is manifestly ill-founded and has to be rejected under 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)