AS TO THE ADMISSIBILITY OF

Application No. 28188/95
by Ken TYRRELL
against the United Kingdom

The European Commission of Human Rights (Second Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

Ms. M.-T. SCHOEPFER, 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 29 May 1995 by Ken TYRRELL against the United Kingdom and registered on 9 August 1995 under file No. 28188/95;

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 citizen , born in 1949 and presently resident in South Glamorgan, Wales. The facts as submitted by the applicant can be summarised as follows.

On 27 February 1990, the Vale of Glamorgan Borough Council ("the Council") refused to renew the applicant's hackney carriage vehicle licence ("taxi licence") on the basis that his vehicle did not comply with certain technical requirements and, the applicant alleges, because it did not have a black bonnet. The applicant lodged a statutory appeal in respect of that decision. On 20 July 1990 the Magistrates' Court upheld the decision of the Council. On 22 September 1990 the Crown Court dismissed the applicant's appeal on the basis that the Council had adduced evidence of numerous faults on the relevant vehicle and the applicant had not called any evidence. Further, the Crown Court refused to state a case for the opinion of the High Court and made a costs order of £100.00 ("fine A") against the applicant and in favour of the Council.

Pending the determination of the applicant's appeal to the Crown Court referred to above, the applicant continued to operate his taxi

despite the Council's refusal to renew his licence and further refused to return his licence plate to the Council. Consequently, the Council served him with several summonses. On 5 September 1990, he was served with a summons in respect of his refusal to return his taxi licence plate to the Council, of which he was found guilty on 10 October 1990 and fined £200.00 ("fine B"). His appeal to Cardiff Crown Court was dismissed on 21 December 1990, due to his non-appearance and costs of £433.06 were awarded against him ("fine C").

By a further summons of 24 October 1990, the applicant was charged with plying for fares without the requisite licence, for which, on 17 July 1991, he was convicted and fined £100 and £30 costs. On 15 November 1991 his appeal against that conviction was upheld and the conviction quashed on the basis that, pending the determination of the proceedings in respect of the Council's refusal to issue the applicant with a licence, that is 22 September 1990 (when the Crown Court refused to state a case), the applicant was entitled to ply for fares and had not therefore committed an offence by doing so before 22 September 1990. Three further summonses issued by the Council were withdrawn.

The applicant then applied for legal aid to have the conviction of 10 October 1990 quashed on the same grounds, that is that he had committed no offence in failing to return his taxi licence plate pending the outcome of his appeal proceedings. On 3 February 1993 legal aid was finally refused on the basis that the applicant had no prospect of success, his application for judicial review or appeal being out of time. The conviction of 10 October 1990 and the consequent cost orders therefore still stood.

On 11 April 1995, the applicant was committed to prison by the Magistrates Court for failure to pay the fines A, B and C. He was sentenced to 7 days consecutive, 7 days concurrent and 14 days concurrent respectively. As a result, the applicant claims that he was imprisoned for 28 days.

While waiting to be taken to Cardiff prison, the applicant asked to see a solicitor. He claims that he was told to ask for one when he got to the prison. At the prison he was told to make an application when he had seen the Governor the next morning. The next morning he saw the assistant governor who told him to see a Mr. G. He saw Mr. G on 13 April 1995 and was told that nothing could be done until after the holidays, as it was Good Friday the next day and a bank holiday on the Monday and the Court and Solicitors would not be able to do anything until after the holidays, that is until Tuesday 18 April 1995. The applicant was eventually visited by a solicitor on 19 April 1995. That solicitor advised the applicant that he would have served his time before the Court could do anything and that he should consult him after his release.

COMPLAINTS

1. The applicant complains that he was imprisoned for an offence that he did not commit and that this constitutes inhuman and degrading treatment within the meaning of Article 3 of the Convention.

2. The applicant further complains that he was unlawfully deprived of his liberty in violation of Article 5 of the Convention. He further claims that he was deprived of his right to a review of the lawfulness of his detention under Article 5 para. 4 of the Convention alleging that its legality was never considered by a court, due to the holiday period at the time of his imprisonment and that he was not even allowed to see a solicitor until nearly a week later, when he was told that by the time the matter came before the court he would have been released as he would have served his time. Finally he complains that he has been deprived of his right to compensation as guaranteed by Article 5

para. 5 of the Convention.

3. The applicant further complains that his conviction of 10 October 1990 was contrary to Article 7 and that he was denied legal aid to appeal against that conviction contrary to Article 6 (3)(c) of the Convention.

4. The applicant further complains under Article 4 para. 2 of Protocol No. 7 of the Convention that the result of his appeal in November 1991 showed that the summons of 5 September 1990 was wrong in law.

5. The applicant further complains under Article 8 that he has been subjected to constant harassment from the enforcement officer who frequently informed him that he would be reported for working while he was not entitled to. The applicant submits that in view of the decision of 15 November 1991, this was clearly wrong. Further he claims that the Council acted maliciously in serving him with summonses and then withdrawing them.

6. The applicant further complains under Article 13 that he has been denied an effective remedy.

THE LAW

1. The applicant complains that his imprisonment was contrary to Article 3 (Art. 3) of the Convention. Article 3 (Art. 3) provides as follows.

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The case-law of the Convention organs establishes that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of that minimum is relative and depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects (see e.g. Eur. Court H.R., Ireland v. the United Kingdom judgment of 18 January 1978, series A no. 25, p. 65, para. 162).

The Commission considers that the applicant has only alleged that he was wrongfully imprisoned and that he has neither alleged nor shown that he suffered treatment of such severity as to fall within the scope of Article 3 (Art. 3).

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

2. The applicant complains that he was unlawfully deprived of his liberty contrary to Article 5 (Art. 5) of the Convention. Article 5 (Art. 5) provides, so far as relevant, as follows.

> "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:
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> a. the lawful detention of a person after conviction by a competent court;
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> b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> .....

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.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The Commission recalls that the applicant was imprisoned pursuant to the court order of 11 April 1995, for the non-payment of fine A: a costs order made against him on 22 September 1990 in the proceedings relating to the Council's refusal to renew his taxi licence, fine B: a fine of £200.00 following his conviction on 10 October 1990 for refusing to return his taxi licence to the Council and fine C: a costs order of £433.06 relating to the costs of his appeal against his conviction of 10 October 1990, that was dismissed on 21 December 1990 due to his non-appearance.

The Commission finds therefore that the applicant was detained for non-compliance with orders of the courts to pay three fines and accordingly that the purpose of the detention fell within Article 5 para. 1(b) (Art. 5-1-b) of the Convention. Insofar however as the applicant submits that these orders were not lawful, it does not appear that he has exhausted his domestic remedies as required by Article 26 (Art. 26) of the Convention; he did not appear at his appeal hearing at Cardiff Crown Court on 21 December 1990, nor did he take judicial review proceedings to have his conviction of 10 October 1990 quashed. Insofar as he submits that his detention on the basis on any unlawful court order was not lawful, the applicant did not apply for habeas corpus, a remedy that allows for the prompt examination of the lawfulness of detention (see Eur. Court H.R., Brogan and others v. United Kingdom, judgment of 29 November 1988, Series A no. 145, p. 25, para. 40). He has also therefore failed to exhaust his domestic remedies in this respect and this aspect of the case must be rejected for failure to exhaust domestic remedies pursuant to Article 27 para. 3 (Art. 27-3) of the Convention and as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

As to the applicant's complaints under Article 5 para. 4 (Art. 5-4) of the Convention that the lawfulness of his imprisonment was not considered by a court and that during his first eight days of detention he was not able to consult a solicitor, the Commission recalls that once an individual has been released Article 5 para. 4 (Art. 5-4) ceases to be applicable, save insofar as he complains about the speediness with which the lawfulness of his detention was considered by the court (see No. 9403/81, D.R. 28 p. 235).

The Commission notes that the applicant has been released. It further notes that whilst in prison the applicant never took habeas corpus proceedings which would have allowed for court review of the lawfulness of his detention. While the applicant may have been delayed access to a solicitor, the Commission notes that even after consultation with a solicitor, the applicant did not commence proceedings challenging the lawfulness of his continued detention. In view of the above the Commission considers that no issue as to the speediness of the review arises and that no violation of Article 5 para. 4 (Art. 5-4) of the Convention is therefore disclosed.

Accordingly this part of the complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

As to the applicant's complaint that he has been deprived of his right to compensation as guaranteed by Article 5 para. 5 (Art. 5-5) of the Convention, the Commission recalls that the right to compensation under this provision presupposes that a violation of one

of the other paragraphs of Article 5 (Art. 5) has been established either by a domestic organ or by the Convention organs (see eg. No. 7950/77, Dec. 4.3.80, D.R. 19 p. 213). In the present case however, the Commission has rejected the applicant's complaints under Article 5 paras. 1 and 4 (Art. 5-1, 5-4) of the Convention.

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

3. Insofar as the applicant invokes Article 7 (Art. 7) of the Convention in respect of his conviction of 10 October 1990 and Article 6 para. 3(c) (Art. 6-3-c) of the Convention in respect of the refusal of the legal aid board to grant him legal aid on 3 February 1993, and even assuming that the applicant exhausted domestic remedies, the Commission notes that these events took place more than six months before the applicant's introduction of the complaint before the Commission.

It follows that this part of the application must be rejected as inadmissible within the meaning of Article 27 para. 3 (Art. 27-3) of the Convention.

4. The applicant complains under Protocol No. 7 Article 4 para. 2 (P7-4-2) of the Convention that the result of his appeal in November 1991 showed that the summons of 5 September 1990 was wrong in law.

The Commission recalls that the United Kingdom has not ratified Protocol No. 7. Accordingly, its provisions cannot be invoked by the applicant.

It follows that this part of the application must be dismissed as incompatible rationae materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant further complains under Article 8 (Art. 8) that he has been subject to constant harassment from the enforcement officer who frequently informed him that he would be reported for working while he was not entitled to. The applicant submits that in view of the decision of 15 November 1991, this was clearly wrong. Further he claims that the Council acted maliciously in serving him with summonses and then withdrawing them.

The Commission recalls that all the incidents to which the applicant refers appear to have taken place some time in 1990. Even assuming therefore that the applicant was able to substantiate his complaints, and even assuming the applicant had exhausted domestic remedies, of which there appears no evidence, this part of the application must be dismissed as not having been submitted within the requisite six month period, which must have started to run, at the very latest on 15 November 1991.

It follows that this part of the application must be rejected as inadmissible within the meaning of Article 27 para. 3 (Art. 27-3) of the Convention.

6. The applicant further complains under Article 13 (Art. 13) of the Convention that he has been denied an effective remedy. Article 13 (Art. 13) provides as follows.

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

As regards the applicant's complaint under Article 5 (Art. 5), the Commission recalls that Article 5 para. 4 (Art. 5-4) of the

Convention provides a more rigorous procedural guarantee than Article 13 (Art. 13) of the Convention and therefore operates as a lex specialis with regard to that right, to the exclusion of the more general provisions of Article 13 (Art. 13) of the Convention (cf., De Jong, Baljet and Van den Brink v. Netherlands, judgment of 22 May 1984, Eur. Court HR, Series A no. 77, para 60).

The Commission further recalls that Article 13 (Art. 13) of the Convention requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see Eur. Court H.R., Powell and Rayner v. United Kingdom, judgment of 21 February 1990, Series A no. 172, p. 14, para. 31).

In light of the Commission's findings above as to the applicant's remaining complaints, the Commission considers that the applicant does not have an arguable claim.

Accordingly this part of the application must be dismissed 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.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber