AS TO THE ADMISSIBILITY OF

Application No. 33186/96
by Charlene Sarah Edith WEBB
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 2 August 1996 by Charlene Sarah Edith WEBB against the United Kingdom and registered on 25 September 1996 under file No. 33186/96;

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 Bermuda, born in 1966 and currently in custody in Bermuda. She is represented before the Commission by Ms. Cordella Stewart, a solicitor practising in London. The facts of the case as submitted by the applicant, may be summarised as follows.

The particular circumstances of the case

On 28 March 1995, the Supreme Court of Bermuda convicted the applicant of two counts of conspiracy to import prohibited drugs, two counts of importation of prohibited drugs and two counts of possession of controlled drugs. In each case the drugs were respectively cocaine and cannabis. The applicant was sentenced to a total of 12 years imprisonment.

The prosecution case was that during 1993 a group of United States servicemen stationed at the US Naval Base, Bermuda, became involved in a criminal conspiracy to import prohibited drugs from the United States to Bermuda, and that the applicant, a citizen of Bermuda, was involved in this conspiracy. Two of those involved were C.S. and O.F., both serving members of the US Armed Forces stationed in Bermuda. O.F. was detained in September 1993. He was interviewed by the US

Investigation Officer and the Bermuda Police. During the investigation both O.F. and C.S. (who had been named by O.F.) admitted involvement in a drug importation circle and agreed to co-operate with the authorities. Their co-operation involved the carrying of a "dummy" package of drugs, which was subsequently found in the applicant's handbag. The applicant admitted knowing O.F. and receiving packages from him, but stated they were unsolicited gifts. She later resiled from this admission, stating it was obtained under oppression.

Prior to the applicant's trial, O.F. and C.S. were charged, convicted and sentenced by a US court martial. O.F. and C.S. were treated more leniently as a result of their co-operation with the US military authorities. O.F. and C.S. also entered into an agreement with the Attorney General of Bermuda, whereby they were granted immunity from prosecution by the civil authorities in Bermuda on three express conditions, namely that they each give evidence for the prosecution at the applicant's trial, that neither commit perjury in the course of giving evidence and that the testimony they give be consistent with the statements they had previously given to the Bermuda police.

Before the commencement of the trial, the applicant's counsel applied to the judge to exercise his discretion to exclude the evidence of O.F. and C.S., on the grounds that the immunities and conditions imposed upon them rendered them unreliable witnesses. The judge rejected the application and admitted the evidence of O.F. and C.S.

The prosecution also adduced evidence of various letters and a facsimile that were said to implicate the applicant. The applicant denied authorship of these letters. The prosecution called a work colleague of the applicant, who testified that the handwriting was that of the applicant.

At the close of the prosecution case, counsel for the applicant made a submission to the judge that there was no case to answer, relying upon the conditions under which O.F. and C.S. gave evidence, which it was alleged made their evidence unreliable. The applicant's counsel applied to the judge to allow the jury to remain in court while the submission was made and ruled upon, contrary to normal practice. The judge permitted the jury to remain during the submission of no case to answer. The judge rejected the submission of no case to answer and allowed the trial to continue. In his final summing up the judge gave a direction on how to assess the credibility of O.F. and C.S. and alerted the jury to the fact that they gave evidence after having made pre-trial agreements with the US authorities. The judge also warned the jury of the dangers of relying upon the evidence of O.F. and C.S. without independent confirmation, and gave a clear direction on corroboration evidence.

The applicant appealed against her conviction to the Court of Appeal of Bermuda. Her grounds of appeal included the fact that the trial judge should not have admitted the evidence of O.F. and C.S., or that alternatively he should have carefully directed the jury as to the possible unreliable nature of their evidence. Further grounds of appeal were that the submission of no case to answer was heard in the presence of the jury and that an identification of handwriting should not have been given by a non-expert.

On 30 November 1995 the applicant's appeal was dismissed by the Court of Appeal of Bermuda. The Court of Appeal, in a fully reasoned judgment, dealt with each of the applicant's grounds of appeal. It found that the judge was not required to exclude the evidence of O.F. and C.S, and that he gave adequate directions on how the jury should deal with that evidence. It also noted that the applicant's counsel had requested the jury to be present for the submission of no case to answer, and that even bearing in mind the later case of Crosdale v. R. ([1995] 2 All ER 500), there was no prejudice to the applicant in the

fact that the judge had departed from the ordinary Bermudian procedure of considering the submission of no case to answer in the presence of the jury, although it accepted that there had been an irregularity. As to the handwriting evidence, the Court of Appeal agreed with the trial judge that the evidence was not evidence on comparison of handwriting (which might have required an expert), but a statement by the witness that he recognised the handwriting as the applicant's. Accordingly, it could be admitted.

The Court of Appeal refused special leave to appeal to the Judicial Committee of the Privy Council ("the Privy Council"). The applicant renewed her application for special leave to the Privy Council. At a hearing in London on 5 February 1996 the applicant's counsel addressed the Privy Council at an oral application for special leave. The Privy Council refused leave.

Relevant domestic law

The Judicial Committee of the Privy Council is the final appellate court for Bermuda. It is a Commonwealth and not an English Court, which sits in London for convenience only. The practice and procedure of the Privy Council is governed by the Judicial Committee Rules 1957. If the supreme domestic court refuses an appeal, special leave for an appeal may be sought from the Privy Council itself. The Privy Council does not as a rule grant special leave unless the case raises a point of "great and general importance" or in cases of "grave injustice", such as where there has been a disregard of legal process or a violation of natural justice (Halsburys Laws of England, Vol 10 Para 786).

COMPLAINTS

The applicant complains that her trial was unfair and in violation of Article 6 para. 1 of the Convention. In particular she complains that the Court admitted in her trial the evidence of two accomplices and the evidence of a non-expert witness to identify her handwriting. She complains that the trial judge heard and rejected a submission of no case to answer in the presence of the jury. Finally she complains that the Privy Council failed to give reasons for its refusal of special leave to appeal.

THE LAW

The applicant invokes Article 6 para. 1 (Art. 6-1) of the Convention, claiming that her trial was unfair. Article 6 para. 1 (Art. 6-1) of the Convention provides so far as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ..."

The applicant complains that the admission of the evidence of O.F. and C.S., and the admission of the evidence of a non-expert as regards her handwriting, rendered the trial unfair.

The Commission notes that the United Kingdom has made a declaration under Article 63 extending the Convention to Bermuda and that an Article 25 declaration has also been made in respect of Bermuda. The Commission accordingly has jurisdiction and is competent to consider the applicant's complaints about proceedings in Bermuda.

The Commission recalls that the admissibility of evidence is primarily governed by the rules of domestic law. The admissibility and assessment of evidence are in principle matters for the national courts. The Commission's task under the Convention is to ascertain whether the proceedings, considered as a whole, were fair (Eur. Court HR, Bricmont v. Belgium judgment of 7 July 1989, Series A no. 158, p. 31, para. 89 and Saidi v. France judgment of 20 September 1993,

Series A no. 261-C, p. 56, para. 43).

The Commission notes that O.F. and C.S. had been charged, convicted and sentenced by the US court martial prior to giving evidence. Further O.F. and C.S. were granted immunity from prosecution in the civil jurisdiction. With regard to the condition imposed upon O.F. and C.S., that they give evidence in accordance with their statements to the Bermuda Police, the Commission notes that there was also an express obligation on O.F. and C.S. not to commit perjury. The judge further gave a clear direction on assessing the credibility of witnesses and the dangers of convicting on uncorroborated evidence, and the Court of Appeal confirmed this. The Commission considers that in these circumstances the exercise of the judge's discretion to admit the evidence of O.F. and C.S. cannot be said to have rendered the trial unfair within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The applicant criticises the fact that the judge permitted a work colleague of the applicant to give evidence on the applicant's handwriting and authorship of certain documents. There is no indication that the witness was not familiar with the applicant's handwriting and it was for the jury to weigh this evidence against the applicant's denial of authorship. In these circumstances the Commission does not consider that the judge's admission of such evidence, amounts to unfairness within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The applicant complains that the submission of no case to answer was heard and dismissed in the presence of the jury. The Commission notes that the general rule is that such submissions are made in the absence of the jury, so as not to risk any prejudice to the defendant and that the practice of holding the submission in the presence of the jury has been the subject of judicial criticism. The Commission also notes that in R v. Crosdale ([1995] 2 All ER 500) the Privy Council held that the jury should not be present during a submission of no case to answer due to the risk the jury will be influenced by what they hear, particularly from the judge. However in the present case the applicant's counsel requested that the jury remain for the submission. The submission was made on the ground that the evidence of O.F. and C.S. was too unreliable to found a conviction. The applicant's counsel referred to the immunities granted to O.F. and C.S. in return for their giving of evidence on certain conditions, thus making the jury fully aware of the circumstances and conditions in which these witnesses gave their evidence. Further the judge, in his summing up, drew attention to the pre-trial agreements of O.F. and C.S. with the US Authorities, and warned the jury about the dangers of convicting on uncorroborated evidence. Moreover, the Court of Appeal was categoric that the applicant had suffered no harm as a result of the presence of the jury. In these circumstances the Commission finds that the fact the jury remained for the submission and rejection of no case to answer, cannot amount to unfairness within the meaning of Article 6 para. 1 (Art. 6-1).

The applicant complains that the Privy Council did not give reasons for its refusal of leave to appeal.

The Commission recalls that the manner in which Article 6 para. 1 (Art. 6-1) applies in relation to appeal proceedings depends on the special features of the proceedings involved. Account must be taken of the entirety of the proceedings in the domestic legal order and the role of the appeal court therein: in the case of leave to appeal proceedings, the nature of those proceedings and their significance in the context of the proceedings as a whole must be considered, together with the powers of the appellate jurisdiction and the manner in which the proceedings are actually conducted (see Eur. Court HR, Monnell and Morris v. the United Kingdom judgment of 2 March 1987, Series A no. 115, p. 22, para. 58, where no oral hearing was required on an

application for leave to appeal to the English Court of Appeal). Further, where a supreme court refuses to accept a case on the basis that the legal grounds for such a case are not made out, very limited reasoning may satisfy the requirements of Article 6 (Art. 6) of the Convention (see, for example, E. & G. Müller-Eberstein v. Germany, No. 29753/96, Dec. 27.11.96, concerning the Federal Constitutional Court in Germany, which rejects decisions in summary proceedings by reference to the statutory provisions governing the Federal Constitutional Court).

The Commission first notes that there was an oral hearing before the Privy Council at which counsel for the applicant was heard. The Commission do not consider that the facts disclose any evidence of a lack of equality of arms.

The Commission further notes that special leave to appeal to the Privy Council will only be given where a case raises a point of "great and general importance" or in cases of "grave injustice". In the context of appeals to the Privy Council, where there has been a full appeal before the Court of Appeal, it must be apparent to litigants who have been refused leave that they have failed to satisfy the Privy Council that their case involves either a point of "great and general importance" or a "grave injustice". The factual position is therefore similar to the position before the Federal Constitutional Court in Germany, where no detailed reasons for rejection of a case are given.

The Commission, having considered the proceedings as a whole, considers that there is no indication of unfairness in the present case such as would constitute a violation of Article 6 para. 1 (Art. 6-1).

It follows that the application is 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.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber