AS TO THE ADMISSIBILITY OF

Application No. 24586/94
by Shirley WILSON
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 7 December 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

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 20 June 1994 by Shirley WILSON against the United Kingdom and registered on 11 July 1994 under file No. 24856/94;

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 United Kingdom citizen, born in 1953. She is represented by Mr. M. Phillips, solicitor, of Messrs. Tyndallwoods, Birmingham. The facts of the case may be summarised as follows.

(a) The particular circumstances of the case

In September 1990 and October 1991, the Leicester Magistrates' Court made liability orders in respect of the applicant's unpaid community charge (poll tax).

On 30 November 1993, in answer to a summons issued on the application of Newcastle Borough Council, the applicant appeared at that court for an inquiry to be made into her means and the reasons for her failure to pay the poll tax. The applicant, who was not represented, gave evidence that:

(a) her husband was a self-employed painter and decorator but had obtained little work during the past four years;

(b) her earnings from poorly paid part-time employment were therefore effectively the sole source of the family's income;

(c) she had applied for State benefits, including a rebate

against her community charge liability, but had been refused.

(d) her outgoings at the time of the hearing included payments of £80 per month towards a loan taken out to pay one year's community charge liability (£535; the proceedings concerned arrears for the two previous years totalling some £619).

On the basis of this evidence, the magistrates concluded that the applicant's failure to pay the community charge was due to her culpable neglect. They rejected as `derisory' an offer by the applicant's husband to pay £10 per month towards the arrears and issued a warrant committing the applicant to prison for 28 days.

The applicant spent two days in custody before release on bail pursuant to an order made on 1 December 1993 by Mr. Justice Laws, who also granted leave to move for judicial review. The application included a claim for damages.

The application for judicial review was heard in the High Court by Mr. Justice Laws on 16 December 1993. The applicant was represented and had legal aid for these proceedings. The judge observed that the purpose of the community charge legislation was to secure the collection of the tax; the High Court had in similar cases emphasised that imprisonment was to be used as means of extracting payment and not as a punishment. By committing the applicant to prison and failing to give adequate consideration to alternative methods of disposal - in particular, the possibility of imposing a suspended term of imprisonment or alternatively attachment of the applicant's earnings - the magistrates were in effect punishing the applicant for failure to pay. There had been no evidence before the magistrates entitling them to conclude that measures short of imprisonment would not be equally, or indeed more, effective in securing payment than the immediate issue of a warrant of commitment.

The judge quashed the magistrates' decision and remitted the matter to the magistrates' court for reconsideration. He declined to award costs against the magistrates on the ground that their conduct fell short of "misbehaviour". The judge did not address the claim for damages. The applicant has not pursued her claim for damages on the basis of counsel's opinion that it would be impossible to establish the requisite element of "bad faith" on the part of the magistrates.

The order quashing the magistrates' decision of 30 November 1993 is date-stamped 22 December 1993.

(b) Relevant domestic law and practice

Regulation 41 of the Community Charges (Administration and Enforcement) Regulations 1989 ("the 1989 Regulations") provides:

"41. (1) Where a charging authority has sought to levy an amount by distress under Regulation 39, the debtor is an individual, and it appears to the authority that no (or insufficient) goods of the debtor can be found on which to levy the amount, the authority may apply to a Magistrates' Court for the issue of a warrant committing the debtor to prison.

41. (2) On such application being made, the court shall (in the debtor's presence) inquire as to his means and inquire whether the failure to pay which led to the liability order concerned being made against him was due to his wilful refusal or culpable neglect.

41. (3) If (and only if) the court is of the opinion that his failure was due to his wilful refusal or culpable neglect it may if it thinks fit - (a) issue a warrant of commitment against the debtor, or (b) fix a term of imprisonment and postpone the issue

of a warrant until such time and on such conditions (if any) as the court thinks just."

In Re McC [1985] AC 528, the House of Lords held that magistrates acted without jurisdiction or in excess of jurisdiction and would be liable in damages where an individual could show that the magistrates had no jurisdiction over the cause at all, that they exercised their powers in a procedural manner that involved a gross and obvious irregularity, or that the order of the court was not based on any proper foundation of law because of failure to observe a statutory condition precedent.

In a case concerning rates, the predecessor to the community charge (R. v. Manchester City Magistrates' Court, ex parte Davies [1989] 1 All ER 90), the Court of Appeal found that the magistrates' discretionary power to imprison a debtor was "limited and circumscribed" by their obligation to make proper inquiry as to whether failure to pay rates was due to wilful refusal or culpable neglect. The magistrates' deficient inquiry meant that they had failed to observe a statutory condition precedent and therefore acted outside or in excess of their jurisdiction. The magistrates were liable in damages for the applicant's unlawful imprisonment.

On 1 January 1991 Section 108 of the Courts and Legal Services Act 1990 entered into force. The Act replaces Sections 44 and 45 of the Justices of the Peace Act 1979 providing, inter alia, that an action lies against a magistrate who acts beyond jurisdiction if, and only if, it is proved that he acted in bad faith.

Neither the civil nor the criminal legal aid scheme provides for full representation before the magistrates for proceedings for commitment to prison for non-payment of the community charge. The "Green Form" scheme provides two hours' worth of help from a solicitor, and can include preparation for a court case, but does not provide for representation. An extension of the costs limit can be granted by the Legal Aid Board. Assistance by way of Representation ("ABWOR") enables the court, in limited circumstances, to appoint a solicitor who happens to be within the court precincts for purposes other than the provision of ABWOR to represent a party who would not otherwise be represented. The appointment may be made either of the court's own motion or on application by a solicitor. The court is under no obligation to advise a party of the possibility of an appointment. The Duty Solicitor Scheme, which provides representation to accused in criminal cases before magistrates, does not extend to community charge proceedings.

COMPLAINTS

The applicant considers that the court which imprisoned her did not have power to commit her to prison, so that the detention was unlawful. She considers it to have been in violation of Article 5 para. 1 of the Convention. She also considers that, by virtue of Section 108 of the Courts and Legal Services Act 1990, she was deprived of the "enforceable right to compensation" guaranteed by Article 5 para. 5 of the Convention.

The applicant also alleges a violation of Article 6 para. 1 and/or para. 3 (c) of the Convention on the ground that legal aid should have provided for her representation before the magistrates.

THE LAW

The applicant complains that her wrongful commitment to prison by the magistrates and the absence of an enforceable right to compensation violate paragraphs 1 and 5 of Article 5 (Art. 5-1, 5-5) of the Convention. She further complains that Article 6 para. 1 and/or para. 3 (c) (Art. 6-1, 6-3-c) of the Convention required that legal aid should have provided for her representation before the magistrates.

The Commission is not required to decide in this case whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions, since according to Article 26 (Art. 26) of the Convention, "[t]he Commission may only deal with the matter after all domestic remedies have been exhausted... and within a period of six months from the date on which the final decision was taken".

The Commission recalls that the present application was introduced on 20 June 1994.

The Commission notes that at the conclusion of the hearing on 16 December 1993, the judge delivered an ex tempore oral judgment, in the presence of the applicant's counsel, in which he ordered the quashing of the magistrates' decision and gave his reasons for so doing. Although the formal order recording the judge's decision was not stamped by the court office until 22 December 1993, that document merely repeated the operative part of the judgment and contained no further reasoning.

It was therefore on 16 December 1993 that the applicant or her counsel became aware of the basis on which an application could be made to the Commission in relation to the proceedings before the magistrates (cf. No. 9299/81, P. v. Switzerland, Dec. 13.3.84, D.R. 36 p. 20, 22; No. 10889/84, C. v. Italy, Dec. 11.5.88, D.R. 56 p. 40, 57).

Accordingly, the Commission considers that the date of the final domestic decision in respect of the applicants' complaints was 16 December 1993. It follows that the application has been introduced out of time. Furthermore, an examination of the case does not disclose any special circumstances which might have interrupted the running of the six months period.

It follows that the application must be rejected under Article 27 para. 3 (Art. 27-3) 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) — (A. WEITZEL)