

AS TO THE ADMISSIBILITY OF

Application No. 16732/90
by W.K.
against the United Kingdom

The European Commission of Human Rights sitting in private on
11 January 1993, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
G. SPERDUTI
E. BUSUTTI
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI

Mr. M. de SALVIA, Deputy 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 17 April 1990 by
W.K. against the United Kingdom and registered on 18 June 1990 under
file No. 16732/90;

Having regard to

- the report provided for in Rule 47 of the Rules of Procedure of
the Commission;
- the observations submitted by the respondent Government on
11 September 1992 and the observations submitted by the applicant
on 13 September 1992;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1964 and currently
serving a prison sentence in Peterhead prison.

The facts as submitted by the parties may be summarised as
follows.

The applicant was tried before the High Court of Justiciary
between 10 and 16 March 1989 on 13 charges of mobbing and rioting
arising out of disturbances in Perth prison. He had been granted legal
aid and was represented by solicitor and counsel.

The applicant was found guilty. In convicting the applicant, the

jury deleted the words "acting of common purpose" from the charge. He was sentenced on 16 March 1989 to 7 years' imprisonment, to be served consecutively with the term of 13 years' imprisonment which he was already serving.

The applicant's solicitor and counsel advised the applicant to appeal, considering an important and complex principle of law arose concerning the definition of mobbing and rioting as a result of the jury's deletion. An application was made for legal aid, submitted with a note by the applicant's solicitor and senior counsel supporting the appeal.

The Scottish Legal Aid Board refused legal aid on 1 November 1989. A renewed application was refused on 9 November 1989.

As a result, the applicant presented his appeal in person before the High Court. On 10 November 1989, the High Court, sitting as an appeal court, dismissed the appeal, but reduced the sentence to 5 years' imprisonment.

Following the applicant's petition, the Secretary of State decided to exercise his power under Section 263 (1) of the Criminal Procedure (Scotland) Act 1975 and referred the case to the High Court for a fresh appeal to be considered.

The applicant was granted legal aid on 15 March 1991 and was represented by counsel at the hearing which took place on 1 November 1991.

The applicant's grounds of appeal included:

a) the question of law as to whether an accused person charged with mobbing only and not with any crime committed in an individual capacity can be convicted if the mob of which he is said to have been a part is held by the jury to have had no common purpose;

b) that there was insufficient evidence to convict the applicant as an individual (as opposed to member of a mob) of the relevant sub-heads of the charges.

The High Court found that there was substance in the first ground and adjourned for a further report from the trial judge on whether there was sufficient evidence as affected the question of whether the applicant was guilty of any of the crimes as an individual.

The High Court resumed the appeal at a hearing on 6 March 1992 at which the applicant was represented. It rejected the appeal.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 April 1990 and registered on 18 June 1990.

On 1 October 1990, the Commission decided to communicate the application to the respondent Government and to ask for written observations on the admissibility and merits of the application.

The Government's observations were submitted on 11 September 1992 and the applicant's observations were submitted on 13 September 1992.

THE LAW

The applicant complains that he was refused legal aid for representation at his appeal against conviction and sentence. He invokes Article 6 paras. 1 and 3 (c) (Art. 6-1, 6-3-c) of the Convention which provide, as relevant:

6(1). "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

6(3). "Everyone charged with a criminal offence has the following minimum rights:

...

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

The Commission recalls that on 1 and 9 November 1989 the applicant was refused legal aid for his appeal despite support by senior counsel and solicitor. As a result, he represented himself at the hearing of his appeal on 10 November 1989.

On 15 March 1991, the applicant was however granted legal aid for representation at a second full appeal, his case having been referred to the High Court by the Secretary of State under Section 263(1) of the Criminal Procedure (Scotland) Act 1975. He was represented by counsel at the hearings which took place on 1 November 1991 and 6 March 1992.

In these circumstances, the Commission finds that the applicant can no longer be said to be a victim of any violation of Article 6 para. 1 read in conjunction with Article 6 para. 3 (Art. 6-1+6-3) of the Convention.

It follows that the application must be rejected 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.

Deputy Secretary to the Commission

(M. de SALVIA)

President of the Commission

(C.A. NØRGAARD)