COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

ON THE ADMISSIBILITY OF

Application No. 5229/71
by K P T
against the United Kingdom

The European Commission of Human Rights sitting in private on 5 October 1972, the following members being present:

MM. W. F. de GAAY FORTMAN, Vice-President, Acting President (Rule 7 of the Rules of Procedure)
A. SUSTERHENN
F. WELTER
T. B. LINDAL
B. DAVER
T. OPSAHL
K. MANGAN
J. CUSTERS

Mr. A. B. McNULTY, Secretary to the Commission

Having regard to Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 6 September 1971 by K P T against the United Kingdom and registered on 5 November 1971 under file No. 5229/71;

Having regard to the report provided for in Rule 45, 1 of the Rules of Procedure of the Commission;

Having deliberated,

Decides as follows:

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THE FACTS

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

The applicant is a citizen of the United Kingdom, born in Middlesex in 1941. By profession he is a salesman but at the present time he is detained in H. M. Prison, Chelmsford.

From the applicant's statements and the documents submitted by him it appears that in the early hours of the morning of 22 June 1969 the licensee of a public house at Chadwell Heath was brutally attacked and robbed. Shortly after the robbery the applicant was seen near the public house. He does not appear to dispute his presence but says that he was attempting to steal metal from a nearby railway siding. He was in no way connected with the robbery.

The applicant was charged with involvement in the robbery and with assault. He appeared for trial before the Central Criminal Court in February 1970. No witness was able positively to identify the applicant as having taken part in the robbery. The police had ordered a thorough examination of the applicant's clothing and of other evidence by forensic scientists. This examination in no way inculpated the applicant and the police, having discovered this, did not put the scientific evidence before the Court. It is also alleged that police witnesses invented evidence to help the prosecution case. The trial judge put questions to the applicant during the trial, more in the manner of a prosecutor than an impartial arbitrator. The judge's summing up omitted to stress points favourable to the defence and contained references to evidence which was not strictly admissible. On 20 February 1970, after lengthy deliberation by the jury, the applicant was convicted by majority verdict on two counts of robbery and two counts of assault. He was sentenced to a total of eight years' imprisonment.

The applicant applied for leave to appeal against his conviction and sentence. On 16 March 1971 he was granted leave to appeal against his conviction. The appeal was heard by the Court of Appeal on 20 May. The Court agreed that there might have been two minor irregularities in the trial. The trial judge had referred to depositions which were not strictly part of the evidence and had made a misleading statement about blood groups. The Court, however, rejected the appeal. It seems that the two points were considered technicalities of no real importance. The applicant was also refused leave to appeal against his sentence. On 16 December 1971 he was refused leave to appeal to the House of Lords.

Since the rejection of his appeal by the Court of Appeal the applicant has requested the Home Office to grant him a retrial. He now wishes to call further evidence which he chose not to call at the trial. His request has been refused.

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Apart from the fact that he considers himself wrongly convicted, the applicant maintains that it is psychologically unsuitable for him to be held in an ordinary prison. Before his trial, he obtained letters from two psychiatrists to the effect that if he were convicted it would serve no purpose to send him to prison. They described him as showing "some neurotic symptoms" being "a psychopath" and "mildly paranoid". The applicant now wishes to be moved from Chelmsford Prison to an institution at Grendon where he received treatment on a previous occasion. His Member of Parliament, who has given much support and assistance to the applicant, wrote to the Home Office about this. The Home Office reply, dated 8 December 1971, was as follows:

> "In the matter of medical treatment, T 's treatment has been reviewed in the light of your letter but it is not felt that he would benefit from being transferred to Grendon Psychiatric Prison. T is receiving such treatment as he needs from the medical officer at Chelmsford Prison ..."

It also appears that early in 1972 the applicant's mother died suddenly. The authorities refused to let him attend her funeral. A note from the Home Office to the applicant's Member of Parliament explained that, taking into account the security difficulties, it had been considered that strong enough reasons did not exist for making the necessary special arrangements.

Complaints

The applicant complains that on 20 February 1970 he was wrongly convicted at the Central Criminal Court on two counts of robbery and two counts of assault. He complains that the police did not submit scientific evidence which was favourable to him, that police witnesses invented evidence favourable to the prosecution and that the trial judge questioned the defendant in the manner of a prosecutor and then summed up unfavourably to the defence. In this respect the applicant alleges the violation of Art. 6 of the Convention.

It appears that the applicant also wishes to complain of his detention in an ordinary prison, alleging that he should be kept in a special psychiatric institution.

Lastly he complains of the authorities' refusal to give him leave from prison to attend his mother's funeral.

THE LAW

The applicant has made numerous complaints about his trial before the Central Criminal Court in February 1970. He states that the police did not submit scientific evidence which was favourable to him, that police witnesses invented evidence favourable to the prosecution and that the trial judge questioned the defendant in the manner of a prosecutor and then summed up unfavourably to the defence.

It is true that Art. 6 (1) of the Convention secures to everyone charged with a criminal offence a fair hearing by an impartial tribunal. However, while complaining of the failure by the police to submit scientific evidence favourable to him, the applicant has not attempted to explain why he or his defence lawyers could not themselves have called for the production of the evidence had they so wished. The applicant's other allegations, about invention of evidence by police witnesses and about the conduct of the trial judge, are totally unproved and in no way substantiated by the documents produced by the applicant to the Commission. All of these complaints were considered and rejected by the Court of Appeal on 20 May 1971. The applicant has given no good reason why the Commission should call into question the decision of the Court of Appeal.

An examination by the Commission of this complaint as it has been submitted, including an examination made ex officio, does not therefore disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in the above Article.

It follows that this part of the application is manifestly ill-founded within the meaning of Art. 27 (2) of the Convention.

The applicant has next complained that he is detained in an ordinary prison rather than in a psychiatric prison. In some of its previous decisions, the Commission has held that a demand by an applicant that he be held in a particular type of institution is, if considered as such, incompatible with the provisions of the Convention. The Convention nowhere provides for the detailed regulation of the form of a prisoner's detention, nor does it lay down where he must be held. If, therefore, the applicant's complaint is considered as a demand to be kept in a particular type of institution then it is, as such, incompatible with the Convention.

Nevertheless, in the present case the Commission has also considered the applicant's complaint in the light of Art. 3 of the Convention which provides that no-one shall be subjected to inhuman or degrading treatment or punishment. It has considered the question whether keeping a mentally disturbed

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prisoner in an ordinary prison might not, in certain circumstances, amount to such inhuman or degrading treatment. It has then examined further the facts of the present case. In view of the Home Office letter to the applicant's Member of Parliament (dated 8 December 1971), whose substance the Commission accepts, the Commission considers that the applicant is receiving sufficient care and that there is no sign of inhuman or degrading treatment in the present case.

It follows that this part of the application also is manifestly ill-founded within the meaning of Art. 27 (2) of the Convention.

The same ground of inadmissibility applies to the applicant's complaint that he was not allowed to attend his mother's funeral.

It is true that Art. 8 (1) of the Convention secures to everyone the right to respect for his family life. But a note from the Home Office to the applicant's Member of Parliament explained that the applicant had not been allowed to attend the funeral because no strong enough reasons existed for making the necessary special security arrangements. This explanation should be read in the light of Art. 8 (2) of the Convention which authorises interference by a public authority with the right granted in Art. 8 (1) if such interference is "necessary ... in the interests of public safety ... or ... for the prevention of disorder or crime".

The applicant himself has not disputed that such security measures would have been necessary and the Commission considers that in the circumstances the refusal to allow him to attend the funeral was fully justifiable as being in the interests of public safety.

It follows that the remainder of the application is manifestly ill-founded within the meaning of Art. 27 (2) of the Convention.

For these reasons, the Commission

DECLARES THIS APPLICATION INADMISSIBLE

Secretary to the Commission Vice-President of the Commission

(A. B. McNULTY) (W. F. de GAAY FORTMAN)