AS TO THE ADMISSIBILITY OF

Application No. 13731/88
by Arthur BARRIE
against the United Kingdom

The European Commission of Human Rights sitting in private on 14 December 1988, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER, 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 11 February 1988 by Arthur BARRIE against the United Kingdom and registered on 5 April 1988 under file No. 13731/88;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1964 and resident in Glasgow. He is represented by Mr. John Carroll, a solicitor practising in Glasgow. The facts as submitted by the applicant may be summarised as follows.

The applicant is a 24 year old unemployed man suffering the handicap of profound deafness and an inability to communicate by speech.

In early 1986, the applicant began a relationship with a Miss B. As a result of the relationship, Miss B gave birth to a child Lucy Ann on 10 November 1986.

By letter dated 6 February 1987 the applicant received an intimation copy of Miss B's application for legal aid to raise an action for Interdict and Interim Interdict to prevent the applicant

molesting her or removing her child. He consulted a solicitor and, in accordance with procedure, a letter objecting to Miss B's application for legal aid was submitted. It was pointed out, to the legal aid authorities, that the circumstances were that the applicant was a deaf mute. He did have a relationship with Miss B and that relationship ended about May 1986. The last contact the applicant had with Miss B resulted in criminal proceedings being taken against him. The applicant had been charged with assaulting Miss B with a pair of scissors on 8 December 1986. In addition, the applicant wished it to be known that he had not threatened to remove the applicant's child from her care.

On 3 April 1987, the applicant was served with a copy of the Interim Interdict granted to Miss B on 27 March 1987 in his absence and summoned to a diet before the Sheriff on 10 April 1987.

On 7 April 1987 the applicant lodged an application for emergency legal aid with the Scottish Legal Aid Board. The rules required that that application be followed up with a full application for legal aid, the emergency cover being for a very limited period only. A certificate of emergency legal aid was granted on 7 April 1987.

The applicant attended the Sheriff's court on 10 April 1988 with his solicitor. The Sheriff continued the Interim Interdict and attached thereto a power of arrest. The Interim Interdict ordered the applicant not to molest Miss B in any way by abusing her or threatening her or by putting her in a state of fear and alarm or distress or by using violence towards her and also ordered the applicant not to remove Miss B's child.

The applicant, through his solicitors, thereafter lodged a full application for legal aid and this was duly considered by the Scottish Legal Aid Board.

By letter dated 2 September 1987 the applicant was advised that the application had been refused because it was unreasonable that he should receive legal aid in the particular circumstances of the case and that it had not been shown that there was probable cause of action. Further explanation was sought of the Scottish Legal Aid Board and the Board advised that, in their opinion, "there is no probable cause that <words omitted>* would be unreasonable to make legal aid available. No defence has been put forward and it is not accepted that a defence in a civil trial would impinge on criminal proceedings".

The applicant applied for a review of the decision and stressed that he was profoundly deaf and incapable of speech. By letter dated 10 November 1987, the Scottish Legal Aid Board maintained its decision.

The criminal proceedings against the applicant, who had pleaded not guilty, were deserted by the prosecution on 8 December 1987.

COMPLAINTS

The applicant alleges violations under Article 6 of the Convention on the ground that he was denied access to the Court to challenge the interdict by the refusal of legal aid when the interests of justice required that it be granted. The applicant was in receipt of supplementary benefit amounting to £1,240.20 per annum. The allegations within the condescendence of the writ were of criminal conduct on the part of the defender (applicant). He denied the substantive elements of the condescendence. The allegations also formed part of a criminal charge on which the applicant had appeared

in Court and had pleaded not guilty.

THE LAW

The applicant complains of being denied access to court by a refusal of legal aid, and invokes Article 6 (Art. 6-1) of the Convention, which, in its first sentence of paragraph 1, provides, inter alia:

> "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."

The Commission must first consider whether the proceedings in respect of which the applicant was refused legal aid involved the determination of a criminal charge against him or of any of his civil rights or obligations. The Commission recalls that the applicant was the defender in proceedings brought by Miss B for an Interdict and Interim Interdict ordering the applicant not to molest her or use violence towards her and not to remove Miss B's child. The Interim Interdict granted to Miss B on 27 March 1988 was continued in those terms on 10 April 1988 following a hearing at which the applicant was present and represented. The applicant was refused legal aid for representation either to appeal or to defend further proceedings in the matter. The Commission finds that these proceedings do not involve the determination of a criminal charge.

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* the text of the opinion as sent to the applicant appears to omit several words

The Commission also finds that they do not involve the determination of any of the applicant's civil rights and obligations, since the subject-matter of the proceedings, the Interim Interdict, forbids behaviour already prohibited by the criminal law and places no additional restrictions upon the applicant and does not prohibit him from doing anything which he would otherwise have had the right to do.

It therefore follows that the applicant's complaint is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)