AS TO THE ADMISSIBILITY OF

Application No. 26267/95
by David BUDD
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 29 November 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 9 January 1995 by David BUDD against the United Kingdom and registered on 24 January 1995 under file No. 26267/95;

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

The applicant is a United Kingdom national born in 1958 and residing in Colchester, Essex.

On 31 March 1994 the applicant received a notice of abatement of nuisance requiring that no barking emanate from his garden where he kept three greyhound dogs.

Considering that no nuisance was caused by the dogs or, in any event, that the prohibition was too wide sweeping, in July 1994 the applicant submitted to the Magistrates' Court a petition for legal aid to appeal against the abatement notice.

On 2 August 1994 the Court sent a letter to the applicant stating that the proceedings were not criminal within the meaning of the Legal Aid Act 1988. Thereupon the applicant petitioned the competent legal aid board for civil legal aid to pursue the appeal. This was subsequently refused as the proceedings for which legal aid was sought were "not included in Part I of Schedule 2 to the Legal Aid Act 1988." The applicant's ensuing appeal against the refusal was dismissed on

22 November 1994.

COMPLAINTS

The applicant complains under Article 6 of the Convention of the refusal of legal aid.

He submits that an abatement notice together with the appeal procedure amounted to a criminal charge because failure to comply with the notice would trigger enforcement proceedings under Section 8 of the Environmental Protection Act 1990, which were of a criminal nature. Also, the penalty for non-compliance was a fine, and in case of its non-payment, imprisonment. Therefore para. 3(c) of Article 6 of the Convention was applicable in the present case.

Furthermore, even if the proceedings at issue are to be considered as civil, the applicant contends that there had been a violation of the principle of equality of arms as implicit in Article 6 para. 1 of the Convention. Thus an abatement notice seriously affected the individual by transforming what had previously been a legal activity into an illegal one. Since the respondent in appeal proceedings against such an abatement notice was always a state authority, it was contrary to the principle of equality of arms that legal aid should never be available therefor.

THE LAW

1. The applicant complains that the refusal of legal aid for an appeal against a notice of abatement of nuisance was in breach of his right to free legal assistance under Article 6 para. 3 (c) (Art. 6-3-c) of the Convention and that it amounted to a violation of the principle of equality of arms, implicit in Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 (Art. 6) of the Convention, insofar as relevant, provides as follows.

"(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 ...

...

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

...

c. ... 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 notes that in the present case by virtue of a notice of abatement of nuisance the applicant was required to ensure that no barking emanate from his garden. The Commission finds that the proceedings for which legal aid was refused, namely an appeal against the abatement notice, did not concern the determination of a criminal charge against the applicant, the link with hypothetical criminal proceedings being too remote.

It follows that Article 6 para. 3 (c) (Art. 6-3-c) was not applicable in the present case.

The Commission has therefore examined the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention, which enshrines inter alia the right of access to court. The Commission recalls in

this respect the Convention organs' case law according to which in certain circumstances the refusal of legal aid in proceedings involving the determination of civil rights and obligations may amount to a denial of access to court (cf. Eur. Court H.R., Airey judgment of 9 October 1979, Series A no. 32. p.14, para. 26; and No. 11564/85, Dec. 4.12.85, D.R. 45, p. 291).

The Commission is not required to decide whether proceedings by way of appeal against the abatement notice would have involved a determination of the applicant's civil rights or obligations in the present case, since the complaint is in any event inadmissible for the following reasons.

The Commission notes that the applicant sought legal aid to appeal before a Magistrates' Court against an abatement notice on the grounds that no nuisance had occurred, and that, in any event, the prohibition imposed on him had been too wide sweeping. In view of the lack of legal complexity of these issues and of the proceedings for which legal aid was requested, the Commission finds that the refusal of legal aid to the applicant, who could present his case in person, did not amount to a denial of access to court contrary to Article 6 para. 1 (Art. 6-1) of the Convention.

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

2. As regards the complaint that there had been a violation of the principle of equality of arms, the Commission recalls the Court's case-law according to which the Convention organs' task when examining an application under Article 6 (Art. 6) of the Convention is to ascertain whether the proceedings, considered as a whole, were fair (Eur. Court H.R., Windisch judgment of 27 September 1990, Series A no. 186 p. 10, para. 25). One feature of the concept of a fair trial is the principle of equality of arms (see, among other authorities, Eur. Court H.R., Borgers judgment of 23 January 1991, Series A no. 214B, p. 31 para. 24; and Dombo Beheer judgment of 27 October 1993, Series A, no. 274, p. 19 paras. 32, 33).

However, in the present case the applicant when complaining of an alleged breach of the principle of equality of arms refers to appeal proceedings which, as it would appear from his submissions, he never pursued. The Commission finds, therefore, that the applicant may not claim to be a victim of a violation of his right to a fair trial as enshrined in Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that the remainder of the application is also 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.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)