AS TO THE ADMISSIBILITY OF

Application No. 30234/96
by Roger EVEREST
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. J. LIDDY, President
MM. E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 2 February 1996 by Roger EVEREST against the United Kingdom and registered on 16 February 1996 under file No. 30234/96;

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 British national, born in 1939. He is a barrister and resides in Mid-Glamorgan in Wales. In the proceedings before the Commission he is represented by Mr. J. Mackenzie, a solicitor practising in Southall in England.

The facts, as they have been submitted by the applicant, can be summarised as follows:

In November 1990 the applicant and his wife were ordered by the High Court of Justice to pay their daughter's school £10,000 for arrears of fees. The applicant and his wife gave an undertaking to the court to pay £500 per month.

As the applicant did not make the payments required, the school lodged a complaint against him to the Bar Council. The Professional Conduct Committee of the Bar decided to bring disciplinary proceedings against the applicant, inter alia, for discreditable conduct in that he had failed to comply with the undertaking he had given to the court to pay the school fees and for professional misconduct in that he had

failed to provide comments on the complaint lodged against him by the school, although the Bar Council had required him to do so.

The applicant appeared before a Disciplinary Tribunal, composed of a judge, three barristers and Mr G, a lay member of the Professional Conduct Committee of the Bar. The applicant had objected to the participation of Mr G, inter alia, on the ground that G was a member of the body which had decided to bring disciplinary proceedings against him. However, the President of the Bar Council had refused to exercise his discretion under the Disciplinary Tribunal Regulations 1990 and nominate a substitute member of the Tribunal. On 26 October 1994 the Tribunal found the applicant guilty of the two above-mentioned charges and a third charge and suspended him from practising as a barrister for twelve months.

On 6 January 1995 the applicant appealed against the decision of the Disciplinary Tribunal to the Visitors to the Inns of Court. On 4 May 1995 a judge, sitting as the Visitor to the Inns of Court, allowed the appeal in respect of the third charge but upheld the two above-mentioned charges. The penalty remained unchanged.

The applicant applied to the Divisional Court for certiorari to quash the decision of 4 May 1995 relying on the fact that G was a member of the Professional Conduct Committee from which he received a fee. On 10 July 1995 a judge refused the application. The applicant renewed his application to the full court. On 26 July 1995 the Divisional Court, considering that G had been entirely impartial and the Tribunal had been entirely fair, rejected the application. The applicant appealed against the decision of the Divisional Court to the Court of Appeal, which rejected his appeal on 2 November 1995.

COMPLAINTS

The applicant complains under Article 6 of the Convention about the institution of disciplinary proceedings against him to enforce an undertaking he had given to a court not in his professional capacity but in his capacity as a litigant. He stresses that no proceedings for contempt of court had been instituted against him and submits that the infliction of sanctions by the Disciplinary Tribunal had the effect of operating a parallel system of justice to deal with his indebtedness applying different and more draconian sanctions than those applied by the normal system of civil justice. He also complains that his civil rights were not determined by an impartial tribunal, because a member of the Professional Conduct Committee sat in the Disciplinary Tribunal that tried him.

THE LAW

The applicant complains of a violation of Article 6 (Art. 6) of the Convention in that disciplinary proceedings were instituted against him to deal with a civil matter and in that the Disciplinary Tribunal of the Bar was not impartial.

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention guarantees the right to a fair hearing by an impartial tribunal in the determination of one's civil rights and obligations.

Insofar as the applicant complains that the very fact that disciplinary proceedings were instituted against him amounts to a violation of the Convention, the Commission considers that the Contracting States remain free to apply disciplinary law to an act which is not carried out in the normal exercise of one of the rights protected under the Convention, provided that the disciplinary proceedings comply with the relevant requirements of Article 6 (Art. 6) of the Convention if they involve a determination of civil rights and obligations or of a criminal charge within the meaning of that provision.

The Commission notes that the disciplinary proceedings complained of resulted in the applicant's being suspended from practising as a barrister for twelve months. It follows that they involved a determination of civil rights and obligations and, as a result, Article 6 para. 1 (Art. 6-1) of the Convention was applicable (see, mutatis mutandis, No. 12502/86, Dec. 9.3.88, D.R. 55, p. 251).

The Commission also recalls that, according to the case-law of the Court, disciplinary matters involving the determination of civil rights and obligations may be dealt with by the jurisdictional organs of professional associations, provided that either these organs comply with Article 6 para. 1 (Art. 6-1) of the Convention themselves or they are subject to subsequent control by a judicial body with full jurisdiction providing the necessary guarantees (Eur. Court HR, Albert and Le Compte v. Belgium judgment of 10 February 1983, Series A no 58, p. 16, para. 29).

In the light of this case-law, the Commission considers that, since the applicant's case has also been considered by on appeal by the Visitors, it is not necessary to examine the implications, if any, which the participation of G might have had for the impartiality of the Disciplinary Tribunal. The Commission recalls in this connection that, as already established in its case-law, the Visitors to the Inns of Court act as an appeal tribunal with full jurisdiction on all questions of fact and law, including questions relating to sentence. In this respect, therefore, the Visitors satisfy the requirement as to the scope of jurisdiction considered essential under Article 6 para. 1 (Art. 6-1) of the Convention (No. 12502/86, loc. cit.). Moreover, the applicant has not questioned the impartiality of the judge who sat, as Visitor to the Inns of Court, to examine his appeal against the decision of the Disciplinary Tribunal.

In the light of all the above, the Commission considers that no appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention is disclosed. It follows that the applicant's complaints are inadmissible, being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber