AS TO THE ADMISSIBILITY OF

Application No. 14720/89
by Terence EWING
against the United Kingdom

The European Commission of Human Rights sitting in private on 6 May 1989, the following members being present:

MM. J.A. FROWEIN, Acting President
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 27 March 1987 by Terence EWING against the United Kingdom and registered on 2 March 1989 under file No. 14720/89;

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 United Kingdom citizen born in 1952 and resident in London. This is his seventh application to the Commission.

The facts of the case, as submitted by the applicant and which may be deduced from documents lodged with the application, may be summarised as follows:

The applicant has been the defendant to various proceedings involving bank frauds. In the course of interlocutory proceedings (a Mareva injunction to prevent the applicant using money placed on a bank account which he had opened under a pseudonym, money believed to have been obtained fraudulently), hearings were mostly held in private before a Master or Judge in Chambers of the Queen's Bench Division of the High Court. Masters of the Queen's Bench Division have power to transact all such business and exercise all such authority as a Judge in Chambers. A Master may refer to such a Judge any matter which he thinks should properly be decided by a Judge and a Judge may direct

that any matter be heard in open court. Apparently on one occasion, at the applicant's request, the matter was heard in open court.

The injunction was granted to the bank in question on 1 and 9 May 1980. The bank undertook to pay any damages sustained by the applicant in the event that the principal civil claim failed. Thereafter proceedings lay dormant whilst the applicant defended criminal proceedings for theft and forgery (for which he was convicted and sentenced to five years' imprisonment). The bank awaited a possible criminal court order for restitution in order to avoid the expense of full-scale civil litigation against the applicant. The trial court apparently did order restitution, but this order was quashed by the Court of Appeal on 11 March 1983, following the quashing of part of the applicant's conviction. When the applicant did react to the effects of the injunction, as of August 1983 on completion of his sentence of imprisonment, he succeeded in having it discharged and the proceedings dismissed for want of prosecution on 16 January 1984. The High Court then proceeded to examine the applicant's claim for damages, which was issued on 30 March 1984, and rejected on 2 May 1985 after two interim hearings for procedural directions. The High Court considered that the applicant, an inveterate fraudsman, had not shown that he had suffered any real prejudice or damage because of the injunction, as he was unable credibly to establish that he was the owner of the money on the bank account which had been "frozen".

The applicant appealed on 7 May 1985. The Court of Appeal, on 24 October 1986, after two interim procedural hearings, granted the appeal and awarded the applicant £362.65 in interest on the bank account monies for the period during which he had suffered any significant prejudice, i.e. August 1983 until the date of its judgment. It then refused the applicant leave to appeal to the House of Lords on 7 November 1986.

On 15 July 1987 the applicant applied to the Lord Chancellor's Department for compensation in respect of an alleged delay in proceedings. This was refused on 24 March 1988.

COMPLAINTS

The applicant complains that the interlocutory proceedings were held mostly in private, that the proceedings as a whole were unduly lengthy (from 1 May 1980 until 7 November 1986) and that he was denied a right to damages. He has invoked Articles 6 and 13 of the Convention.

THE LAW

1. The applicant has complained that interlocutory proceedings, concerning an injunction which prevented him using certain bank account money, violated the requirements of a public hearing and reasonable length laid down in Article 6 para. 1 (Art. 6-1) of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The applicant has also invoked Article 13 (Art. 13) of the Convention, which ensures an effective domestic remedy for breaches of the Convention. However, the Commission does not find it necessary to examine this aspect of the applicant's claim, the guarantees of this provision being absorbed by the stronger guarantees provided by Article 6 para. 1 (Art. 6-1) of the Convention.

2. As regards the applicant's first complaint that certain of the

interlocutory proceedings were not held in open court, the Commission finds that the hearings in question did not determine the applicant's civil rights and obligations. Article 6 para. 1 (Art. 6-1) of the Convention did not, therefore, apply to them. It follows that this aspect of the case is incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2).

3. As regards the applicant's second complaint about the length of the proceedings as a whole, which were outstanding from 1 May 1980 until 7 November 1986 (six and a half years), the Commission has examined this claim, assuming that the proceedings in question did ultimately determine the applicant's civil rights and obligations, in the light of the criteria laid down by the European Court of Human Rights concerning the particular circumstances of each case, i.e. its complexity, the conduct of the applicant and the conduct of the judicial authorities (cf. e.g. Eur. Court H.R., Capuano judgment of 25 June 1987, Series A no. 119). However, the Commission finds that, whatever the complexity of the case, overall it cannot be said that the proceedings in the present case were unduly lengthy. For the first three years the applicant took little interest in the injunction and its effects whilst he was defending various criminal charges for theft and fraud partly related to the money in question. Once he did react to the injunction, after August 1983, the courts proceeded at a reasonable pace to discharge the Mareva injunction (within six months) and then to determine his successful claim for damages (within two years and eight months through two instances, from the summons to the refusal of leave to appeal to the House of Lords).

In the light of the applicant's dilatory pursuit of the proceedings and the courts' reasonably active handling of them, the Commission concludes that the applicant's complaint about their length is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. Finally the applicant has complained that he has been denied a right to damages. However the Commission does not have to consider whether this claim raises an issue under the Convention because it is clear that the applicant did receive £362.65 in damages by way of interest on the money "frozen" by the injunction during a certain period. He cannot therefore claim under Article 25 (Art. 25) to be a victim of a violation of the Convention and this aspect of the case is incompatible ratione personae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — Acting President of the Commission

(H.C. KRÜGER) — (J.A. FROWEIN)