AS TO THE ADMISSIBILITY OF

Application No. 17070/90
by G.
against the United Kingdom

The European Commission of Human Rights sitting in private on 1 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 13 June 1990 by G. against the United Kingdom and registered on 24 August 1990 under file No. 17070/90;

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 citizen of the United Kingdom, born in 1928 and resident in M., England.

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

The applicant sold a large area of his property in 1981. A boundary dispute arose with successive purchasers of that property from 1985 onwards. The dispute went before the High Court which found against the applicant on 23 January 1989. The applicant alleges, inter alia, that the Court wrongly assessed the evidence and that the neighbours lied. He appealed to the Court of Appeal.

On application by the neighbours, the Registrar of the Court of Appeal ordered on 20 June 1989 that the applicant could not go ahead with an appeal until he paid £16800 into court as security for

the neighbours' legal costs, the applicant having conceded that he did not have any money left to pay costs if his appeal was dismissed. The Registrar explained his decision as follows:

> "The basis of the Court of Appeal's practice in relation to the award for security for costs on the grounds of impecuniosity is this. The rules relating to security are wider and stricter in the Court of Appeal than they are in the court of first instance. Impecuniosity is not, except in the case of a corporate plaintiff, a ground for awarding security for costs in the court below. It is, however, a ground for award of security for costs in the Court of Appeal. A factor which is always significant, and sometimes conclusive, in the court of first instance, is that a plaintiff who has a claim which is bona fide should be allowed to 'have his day in court'. A fortiori, a defendant is allowed to have his day in court defending himself against a plaintiff's claim. The position in the Court of Appeal is quite different. The plaintiff or defendant has already had his day in court in the shape of the trial or other first instance hearing and he is not permitted to have a second day in court in the shape of the appeal safe in the knowledge that liability for the respondent's costs will not effectively be borne by him come what may. Security is awarded on the grounds of impecuniosity on the basis that it would be an injustice to a respondent to have to defend an appeal and pay his own costs win or lose.
>
> I am therefore entirely satisfied that there are good grounds for awarding security in this case in the event of legal aid being refused."

A single judge of the Court of Appeal upheld the Registrar's decision on 15 May 1990, as confirmed by the full Court of Appeal on 13 June 1990.

COMPLAINTS

The applicant complains that he has been deprived of his property, contrary to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. He again invokes Article 8 of the Convention claiming that he has been denied an appeal on the merits.

THE LAW

1. The applicant has complained that he has been deprived of his property contrary to Article 8 (Art. 8) of the Convention, which guarantees, inter alia, the right to respect for one's home. He also invokes Article 1 of Protocol No. 1 (P1-1) to the Convention which secures the peaceful enjoyment of possessions.

The Commission notes that the applicant has disputed the ownership of certain property with his neighbours and that this issue has been fully argued before the High Court and decided in the neighbours' favour. It is not the Commission's task to reassess the evidence before the domestic courts in the absence of any evidence of arbitrariness. The High Court has concluded that the property in question belongs to the neighbours and in so doing it cannot be said to have deprived the applicant of his property. In these circumstances, the Commission concludes that this aspect of the case is manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has again invoked Article 8 (Art. 8) of the Convention in respect of a refusal to hear his appeal on the merits.

The Commission refers to its constant case-law that the Convention does not guarantee a right of appeal. Nevertheless where an appeal would normally be available the fundamental guarantees of Article 6 para. 1 (Art. 6-1) of the Convention, including access to court, must be respected (cf. in the context of a criminal appeal, Eur. Court H.R., Delcourt judgment of 17 January 1970, Series A no. 11, paras. 25 and 26). Insofar as the applicant's access to the appeal is barred by the requirement that he first pay £16800 into court as a security for the neighbours' costs should he lose, the Commission considers that an issue may arise under Article 6 para. 1 (Art. 6-1) of the Convention, but not, in this case, under Article 8 (Art. 8). However, the right of access to court guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention is not an absolute right and does not prevent the Contracting Parties from regulating the manner in which the public may have access to the courts in order to ensure the proper administration of justice (No. 6916/75, Dec. 8.10.76, D.R. 6 p. 107 at p. 112).

The Commission considers that it is not an unreasonable requirement of civil litigation that the unsuccessful party may have to pay the adversary's legal costs. In particular, in the light of the circumstances of the present case, the Commission is of the opinion that it is not improper to require the applicant to pay into the appeal court a security for his neighbours' legal costs should he lose before the Court will hear his appeal on the merits. The applicant's access to court in this instance has been partially fettered in order to protect the rights of the other party to the litigation. The Commission does not find that this balancing of the conflicting rights of the litigants over their legal costs at the appeal stage constitutes an arbitrary denial of the applicant's access to court. It concludes, therefore, that this aspect of the case does not disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention. Accordingly, it must be rejected as 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.

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