

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 181/14
Christopher Adrian GADD
against the United Kingdom

The European Court of Human Rights (First Section), sitting on 5 September 2017 as a Chamber composed of:

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having regard to the above application lodged on 27 November 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Christopher Adrian Gadd, is a British national who was born in 1969 and lives in Hampshire. He was represented before the Court by Mr E. Metcalf, a barrister at Monckton Chambers in London.

2. The British Government ("the Government") were represented by their Agent, Ms M. Macmillan of the Foreign and Commonwealth Office.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The factual background

4. The applicant qualified as a solicitor on 1 September 2006. He joined the firm WB Legal LLP ("WBL") in March 2008. At that time WBL was a limited liability partnership with two members, namely MB, the managing partner, and a private company called WB Legal Training Limited ("WBLTL").

5. On 31 August 2008 the applicant became a salaried partner of WBL and a director of WBLTL.

6. After he became a salaried partner of WBL and a director of WBLTL the applicant became aware that MB was defrauding clients and reported him to the Solicitor's Regulation Authority ("SRA"). MB resigned from WBL and WBLTL in January 2009 and was later struck off the roll of solicitors.

7. Following MB's resignation, the applicant continued to practice through WBL. As three years' post-qualification experience was required before a solicitor could supervise a practice alone, another solicitor, PW, became a member of WBL and a director of WBLTL.

8. WBL remained in financial difficulty and was purportedly closed on 30 March 2009. On 2 April 2009 WBLTL, which was already authorised by the SRA to trade as a solicitor's practice, was renamed Christopher Gadd Limited ("CGL"). Thereafter the applicant and PW practised through CGL, taking some of the client files of WBL with them.

9. On 3 April 2009 WBL was placed into administration by one of its creditors.

10. On 18 May 2009 the SRA wrote to the applicant reminding him that he and PW were responsible for the files, documents, and client money of WBL. In that letter it stated that it was satisfied, in light of assurances previously given by the applicant, that he and PW had attended to the closure of WBL correctly, but warned that the matter could be re-investigated in future.

11. On 2 September 2009 PW resigned from CGL as the applicant, having achieved three years' post qualification experience, was qualified to supervise the practice alone.

2. The SRA intervention

12. On 4 September 2009 the SRA informed the applicant that information received from WBL's administrators suggested that the closure of the firm had not been dealt with in accordance with its regulatory requirements.

13. On 15 and 16 September 2009 members of the SRA's Practice Standards Unit visited the offices of CGL to assess that firm's compliance with the Solicitors' Account Rules ("the Rules"), the Solicitor's Code of Conduct ("the Code") and other issued codes and guidance. The resulting

report dated 28 September 2009 was sent to the applicant. It identified a number of breaches and requested confirmation that these would be rectified.

14. On 19 October 2009 the SRA's Forensic Investigation Unit commenced an investigation into WBL. On 18 November 2009 a Forensic Investigation Report ("the Report") concluded, *inter alia*, that CGL appeared to be the successor practice to WBL; that the administrators of WBL had complained that the applicant had not been helpful in effecting the administration of the firm; that the administrators had received a number of enquiries and complaints from former clients of WBL; and that the client account of WBL appeared to have a shortfall of almost GBP 240,000.

15. The Report formed the basis of a case-note submitted to the SRA's Panel of Adjudicators. The case-note identified a number of breaches of the Rules and the Code in respect of WBL and recommended that the SRA exercise its powers of intervention in respect of WBL and any other firm or recognised body of which the applicant or PW were members, directors, managers or owners in order to protect the interests of the clients and former clients of WBL. The case-note indicated that due to the urgency of the matter no explanation had been sought from the applicant or PW.

16. On 7 December 2009 the Panel resolved to exercise its powers in accordance with the recommendations made in the case-note. As a result the accounts of both WBL and CGL were frozen and the applicant's practising certificate was automatically suspended, leaving him unable to practise. Control of CGL passed to a nominated agent appointed by the SRA to manage the firm. The case was referred to the Solicitor's Disciplinary Tribunal ("the Tribunal").

17. The applicant was notified of the intervention by fax on the same day. The notice indicated the terms of the Panel's resolution but the applicant was not provided with a copy of the Report or the case-note. In the course of a telephone call with the SRA on 7 December 2009 and a meeting on 8 December 2009 the applicant was informed that under paragraph 6(4) of Schedule 1 to the Solicitors' Act 1974 ("the 1974 Act") he was entitled to apply to the High Court within eight days of the service of the notice for an order directing its withdrawal.

18. On 17 December 2009 the SRA disclosed the Report to the applicant and requested his explanation of the issues identified within it.

19. The applicant subsequently applied to the SRA for his practising certificate to be reinstated. On 4 January 2010 it was restored subject to a number of restrictive conditions. However, CGL remained under the control of the SRA's nominated agents and was eventually placed into administration on 16 April 2010. The applicant was unable to obtain alternative employment as a solicitor due to the outstanding disciplinary proceedings against him.

20. The professional disciplinary proceedings against the applicant came before the Tribunal on 13 December 2010. The Tribunal found that there had been breaches of the Code and the Rules in respect of both WBL and CGL but it did not find that the applicant had been dishonest or reckless. It ordered that the applicant be suspended from practice as a solicitor for a period of six months commencing on 13 December 2010 and recommended to the SRA that following the end of the suspension period he should only practise in approved employment.

3. Proceedings under the Human Rights Act 1998

21. On 6 December 2010 the applicant had issued a claim for damages against the SRA in the High Court under the Human Rights Act 1998 ("HRA 1998"). In respect of the applicant's Convention rights, the particulars of claim asserted that his Article 6 § 1 rights had been breached by the provision of the eight-day limitation period, which precluded effective access to the courts; that as a consequence, he had been deprived of his property rights in CGL, in breach of Article 1 of Protocol No. 1; and that he was entitled to damages for the loss of an opportunity to challenge the intervention. He further complained that the intervention had been contrary to section 28 of the Legal Services Act 2007.

22. At a hearing on 8 September 2011 the claims concerning the Legal Services Act 2007 were struck out by consent. This left a single issue for determination by the High Court; namely, whether the eight-day time-limit contained in paragraph 6(4) of Schedule 1 to the Solicitors Act 1974 was incompatible with the applicant's human rights.

23. The SRA applied to strike out the applicant's claim and/or for summary judgment to be entered in its favour.

24. On 13 April 2012 the applicant applied for permission to amend his particulars of claim to assert, *inter alia*, that there had been a breach of the principle of natural justice, a breach of the rule of law and misfeasance in public office. He also sought to reintroduce a claim for breach of statutory duty. In respect of his Convention complaints, the amended particulars of claim averred that even if the intervention regime was in general compatible with the HRA 1998, the manner in which it was operated by the SRA – and in particular the process which led to the decision to intervene in CGL – had breached his Convention rights on the specific facts of his case.

25. Both applications came before Mrs Justice Sharp on 19 April 2012. She identified three reasons why the claim in relation to the statutory time-limit was hopeless and doomed to failure. First of all, the domestic courts had established that the statutory scheme for intervention was compatible with the Convention (see, for example, the decision of the Court of Appeal in *Holder v. The Law Society* [2003] 1 WLR 1059, *Sheikh v. the Law Society* [2006] EWCA (Civ) 1577 and *Adams v. The Law Society* [2012] EWHC 980 (QB)). Secondly, as the eight-day time-limit was

prescribed by statute and not by The Law Society, the SRA could not be held liable for damages or for any breaches of the applicant's human rights that might result from it. Thirdly, the applicant's claim was academic since he had not sought to challenge the intervention within any other period which he himself considered reasonable but instead had waited twelve months before bringing a claim by a different and inappropriate procedure (the claim under the HRA 1998).

26. The judge noted that all other matters complained of were matters which "could and should have been dealt with by a challenge to the intervention via the statutory procedure and within the time-limit laid down by Parliament (and in the course of which disclosure would have been provided of the documents Mr Gadd has since been given or asked for)". As such, his claim was "a collateral challenge to the intervention process by other means" and an attempt "to circumvent the statutory limitation on the right of challenge". It was not open to the applicant to do this and, in the circumstances, his attempt to do so was an abuse of the process.

27. In conclusion, the judge noted that the applicant had been well aware of the eight-day time-limit, and there was "no evidence at all" that he had lacked sufficient resources to challenge the intervention when all that would have been required in the first instance was the court fee to issue a claim. Had he been genuinely unable to pay the fee it would have been open to him to apply to the SRA's nominated agent for the release of some of CGL's frozen practice money to use for that purpose.

28. With regard to the application to amend the grounds of appeal, the judge found that the claim for breach of statutory duty was misconceived; the common law principles of natural justice did not apply to the intervention process and, in any case, any procedural unfairness in the process leading to the intervention could have been raised in a statutory challenge to the intervention; the newly advanced claim for breaches of his human rights was only notified to the SRA in April 2012, and the limitation period for bringing such a claim had been one year from the date of the alleged breach; a " breach of the rule of law" was not a pleading known to English law, but insofar as he was claiming that The Law Society acted *ultra vires*, such a challenge could have been made under the statutory procedure; and finally, the claim for misfeasance in public office was not maintainable in the circumstances.

29. Having found that the applicant's claim had no real prospect of success, the judge refused the application for permission to amend the particulars of claim and ordered summary judgment to be entered in favour of the SRA.

30. On 10 May 2012 the applicant applied for permission to appeal the judge's order on the ground that it was arguable that at least in exceptional cases a challenge to an intervention could be brought outside the eight-day time-limit, and the present case was exceptional on account of his

impecuniosity and the fact that he had not been provided with reasons for the intervention until 21 December 2009. Permission was refused on the papers. The application was then renewed orally before the Court of Appeal on 6 June 2013 but permission to appeal was again refused.

31. In refusing permission to appeal, the Court of Appeal found that even if it were to assume that the eight-day time limit could be read down to allow for out-of-time applications in exceptional cases, this was not an exceptional case. First, impecuniosity was not a justifiable basis for not having brought a statutory challenge in time. The proceedings in the present case were not especially complex and the applicant was a solicitor who should have been well able to deal with the allegations against him. It was therefore not arguably necessary that he should have been provided with legal assistance. Secondly, although it was "difficult to understand" why the Report and the case-note had not been disclosed to the applicant prior to the expiry of the eight-day time limit, and there was some merit in the contention that it may have been difficult for him to have pursued proceedings without the Report, on the facts of the case the court did not consider this to be a ground for reading down the eight-day time limit. In particular, it noted that the basis of the applicant's complaint was essentially that he had acted in good faith and co-operated with the authorities in relation to the wind-up of WBL, and those were matters which had been known to him when he received the original notice of intervention. Furthermore, even if some departure from the eight-day period was justified by reference to Convention principles, it had plainly been critical for the applicant to have acted very speedily thereafter. However, while he did take steps to get himself put back on to the register so that he could practice as a solicitor, he had taken no steps in relation to the intervention for twelve months. There was no reasonable prospect for saying that the time-limit should be read down so as to allow a challenge so long after the expiry of that period.

B. Relevant domestic law and practice

1. The power of intervention

32. The Law Society is the governing body of the solicitors' profession. It has a regulatory function and regulatory powers under the Solicitor's Act 1974 ("the 1974 Act"), which it exercises through the SRA. Under section 35 of the 1974 Act, The Law Society is given the power to intervene in a solicitor's practice in circumstances specified in Part I of Schedule 1 to the 1974 Act by exercising any or all of the powers set out in Part II of Schedule 1.

33. Paragraph 1(1) of Part I to Schedule 1 provides that The Law Society may exercise its right of intervention where, *inter alia*, it has reason to

suspect dishonesty on the part of a solicitor in connection with that solicitor's practice or in connection with any trust of which that solicitor is or formerly was a trustee; where it is satisfied that a solicitor has failed to comply with rules as to professional practice, conduct and discipline; and where it is satisfied that it is necessary to protect the interests of clients (or former or potential clients) of the solicitor or his firm.

34. Part II of Schedule 1 sets out the powers available to The Law Society upon intervention. Under paragraph 6, The Law Society has the power to take control of the practice's accounts.

35. Finally, section 15 of the 1974 Act provides for the suspension of the solicitor's practising certificate in the event of an intervention.

2. The right to apply to the High Court

36. The 1974 Act allows an intervened-upon solicitor to apply to the High Court to request the withdrawal of an intervention. Under paragraph 6(4) of Schedule 1, a decision to take possession of the practice monies can be challenged within eight days of the service of the notice by application to the High Court for an order directing The Law Society to withdraw the notice, with not less than forty-eight hours' notice to The Law Society. Paragraph 6(5) provides that upon an application under paragraph 6(4) the High Court may make such an order as it thinks fit.

3. The Human Rights Act 1998

37. Section 3 (1) of the HRA 1998 requires, so far as possible, that primary legislation and subordinate legislation be read and given effect in a way that is compatible with Convention rights.

38. Section 7(1) of the HRA 1998 further provides that a person who claims to be a victim of an unlawful act by a public authority may either bring proceedings against the authority under that Act in the appropriate court or tribunal, or rely on the Convention rights concerned in any legal proceedings. Subject to any rule imposing a stricter time limit in relation to the procedure in question, proceedings brought under the HRA 1998 should be brought within the period of one year beginning with the date on which the act complained of took place, or such longer period as the court or tribunal considers equitable having regard to all the circumstances.

4. The right to apply for the reinstatement of the practising certificate

39. Under section 16(3), a solicitor may, at any time before the expiry of his practising certificate, apply to The Law Society to have the suspension of the certificate terminated. Under section 16(4), upon receipt of an application The Law Society may terminate the suspension either unconditionally or subject to such conditions as it may think fit.

40. If The Law Society refuses the application or terminates the suspension subject to conditions, the solicitor may appeal against that decision.

5. Intervention and human rights

41. In *Holder v. Law Society* [2003] 1 WLR 1059 ,[2003] EWCA Civ 39 the Court of Appeal accepted that an intervention under the 1974 Act gave rise to an interference with a solicitor's right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention. However, having regard to issues of proportionality and the margin of appreciation it concluded that both the legislation itself and the approach taken by The Law Society had struck the fair balance required by Article 1 of Protocol No. 1.

42. Sir Christopher Staughton, who agreed with the leading judgment of Lord Justice Carnwath, observed:

> "38. In the exercise of its powers of intervention the Law Society must of course comply with the Human Rights Convention. I can imagine circumstances where the Law Society might be found not to have complied with the Convention, or with the Human Rights Act 1998. After all, a solicitor whose practice is the object of an intervention loses his practising certificate, and in all probability his livelihood as well. The provisions for bringing an intervention to an end are very unlikely to restore the solicitor's goodwill and his prosperity. If it comes about that the intervention was mistaken or unjustified, there is a risk that the solicitor will suffer a substantial loss without recourse to any remedy. In practice this may never happen; but it is a cause for concern. However, not in this case."

43. In *Sheikh v. Law Society* [2007] 3 All ER 183, [2006] EWCA Civ 1577 Chadwick LJ, at the end of his leading judgment, made further *obiter* comments regarding the summary process for bringing a statutory challenge to an intervention and its compliance with claimants' Convention rights of in light of the decision in *Holder*:

> "110... In Holder v Law Society [2003] EWCA Civ 39, [2003] 1 WLR 1059, this Court considered – and rejected – an argument that the procedure for which Parliament had made provision was incompatible with the solicitor's Convention rights. It rejected that argument (inter alia) on the basis that the court's power to consider whether a fair balance has been struck between the demands of the general interest of the community and the protection of the individual's fundamental rights met the requirements of Article 1 of the First Protocol. But it is clear that, unless the matter can be determined by the court within a short time of the intervention, the solicitor is likely to be denied an effective remedy. That is because the consequences of intervention – if the intervention continues for more than a short time – are likely to be irreversible. The solicitor's clients will have to take their affairs elsewhere; the staff will have found other employment; and the practice will be destroyed in any event.
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> 111. There is an obvious tension between the need to have an application to the court determined speedily and the need for the court to give full and fair consideration to the task which it has been set under the 1974 Act and, now, the Human Rights Act 1998. This case illustrates the need for the Society to give thought as to how that tension can be resolved...

112...The Society should, I think, give thought to the need for Panel resolutions to identify, with much more specificity than in this case, the reasons which (in the Panel's view) make intervention necessary. If those reasons are not identified at an early stage, there is a danger that the solicitor will be denied the effective protection which Parliament plainly intended a summary process to provide.

113. There will, of course, be many cases in which the solicitor who has suffered intervention will be in no doubt as to the Society's concerns. And, as I have said, there will be cases where the solicitor wishes to challenge the validity of the resolution on public law grounds. But, in cases where, although the solicitor knows what material was before the Panel, there is genuine doubt as to the matters which the Society regards as sufficiently serious to justify intervention, it seems to me that the court should be ready to assist – on an early application for directions following the issue of an application under the schedule 1 procedure – by requiring the Society to state the grounds upon which (on the material then known to it) the application will be resisted. Such a statement would enable the solicitor to address the Society's concerns in a focused response. And, in the light of that response, the Society can explain to the court why it takes the view (if it does) that the concerns have not been met.

114. I appreciate that the process suggested in the previous paragraph may require the court to adopt a more pro-active role on applications under schedule 1 to the 1974 Act than hitherto; and that the need for an early determination of such applications will place demands on the court's resources which it may be difficult to meet. But, as it seems to me, the court will be ready to meet those demands in order to ensure that the solicitor does obtain the effective protection which the Convention requires and which the 1974 Act was plainly intended to provide."

COMPLAINTS

44. The applicant complaints that the failure to disclose the Forensic Investigation Report to him within the eight-day time-limit deprived him of effective access to a court, in violation of Article 6 § 1 of the Convention.

45. He further asserts that the intervention into his firm interfered with his right to property under Article 1 of Protocol No. 1 of the Convention and that the interference was procedurally unfair, unnecessary and disproportionate to any need to protect the public.

46. Finally, he argues that, contrary to Article 13, his lack of effective access to the statutory procedure for challenging the intervention deprived him of an effective remedy for his complaints under Article 1 of Protocol No. 1 of the Convention.

THE LAW

47. Article 6 § 1 provides, insofar as relevant:

"1. 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."

48. Article 1 of Protocol No. 1 provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

49. Article 13 provides as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

50. The Government submitted that the applicant had failed to exhaust domestic remedies, since he did not issue proceedings in the High Court under Schedule 1, paragraphs 6(4) to the Solicitors Act 1974 (see paragraph 36 above), either within the eight-day time period or at all. Had he done so, he could have advanced all the arguments he wished, including his human rights arguments, in support of setting aside the intervention. Instead, he waited a year before bringing a claim for damages, which the High Court dismissed as misconceived. Had he brought a challenge under the 1974 Act, the High Court would have had full jurisdiction to rule on the merits of both the exercise and the continuation of the intervention. It would have approached the whole matter afresh on the basis of the evidence before it at the hearing and if it found either that the grounds for intervention were not established or that the balance of interests had not been struck correctly, it would have had full power to order the withdrawal of the notice of intervention or to make any other order it thought fit. The Government rejected the applicant's assertion that he needed the Report to commence such a challenge, but contended that even if that were the case, he could simply have asked for it.

51. The applicant submitted that the issuing of proceedings in the High Court had not been an effective remedy which was available to him at the relevant time since he did not receive the Report until 21 December 2009, after the expiry of the eight-day time-limit, and, as his funds had been frozen as a result of the intervention, he had no means of obtaining the necessary legal expertise to challenge the intervention.

52. Moreover, he contended that a claim for damages under the HRA 1998 was an effective remedy. In *Sheikh v. the United Kingdom* (dec.), no. 51144/07, § 78, 14 June 2011 the Government had argued that the applicant had not exhausted domestic remedies since she could have raised her human rights complaints either in her High Court challenge to the intervention or, alternatively, in an action for damages for breach of Article 6 and Article 1 of Protocol No. 1. In finding that Ms Sheikh had failed to exhaust domestic remedies, the Court was "satisfied that the remedies proposed by the Government were effective and available in theory and in practice, and offered reasonable prospects of success" (*Sheikh v. the United Kingdom*, cited above, § 94)

B. The Court's assessment

1. General principles

53. The rule of exhaustion of domestic remedies in Article 35 § 1 reflects the fundamentally subsidiary role of the Convention mechanism. As this Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention, it cannot, and must not, take on the role of Contracting States whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged first to have normal recourse to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, amongst many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, Reports of Judgments and Decisions 1996−IV and *Vučković and Others v. Serbia (preliminary objection)* [GC], no. 17153/11 and 29 other cases, §§ 69-71, 25 March 2014).

54. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see also *Vučković and Others*, cited above, § 71). However, while Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism (see *Akdivar*, cited above, § 69 and *Vučković and Others*, cited above, § 76), it does not require merely that applications should be made to the appropriate domestic courts. It normally requires also that the complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 142, ECHR 2010). Consequently, domestic remedies will not have been exhausted when an appeal is not accepted for examination by the domestic

courts because of a procedural mistake by the applicant (*Gäfgen v. Germany*, cited above, § 143).

55. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time; that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him from the requirement (see *Akdivar*, cited above, § 68 and *Vučković and Others*, cited above, § 77).

56. The threshold for a "special circumstances" dispensation is high. It is an established principle that in a legal system providing constitutional protection for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection and, in a common law system, to allow the domestic courts to develop those rights by way of interpretation (see *D. v. Ireland* (dec.), no. 26499/02, § 85, 28 June 2006). Consequently, when deciding whether an applicant should be required to exhaust a particular remedy, the Court has held that mere doubts on his part as to its effectiveness will not absolve him from attempting it. However, an applicant is not required to use a remedy which, "according to settled legal opinion existing at the relevant time", offers no reasonable prospects of providing redress for his complaint (see *D. v. Ireland*, cited above, §§ 89 and 91 and, more recently, *Fox v the United Kingdom* (dec.) 61319/09, § 42 20 March 2012).

57. Finally, in the event of there being a number of domestic remedies which an individual could pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010; *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999; *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V; and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005).

2. Application of the general principles to the present case

58. As the applicant has observed, in *Sheikh v. the United Kingdom* (cited above, § 94), a case which also concerned an intervention by the SRA, the Court accepted that in principle both a statutory challenge to the intervention and a claim for damages under the HRA 1998 were remedies which were effective, available in theory and in practice, and offered reasonable prospects of success.

59. As noted by Mrs Justice Sharp, the present applicant did not attempt to use the first of these potentially effective remedies, either by bringing a challenge in the High Court within the eight-day time-limit, or by bringing an out-of-time application and asking the High Court to extend the time-limit (see paragraph 25 above). However, he contends that this remedy was not "available in practice" since he was not given a copy of the Report within the eight-day time-limit for bringing proceedings, and he could not afford legal representation due to the freezing of his funds.

60. With regard to the applicant's alleged impecuniosity, Mrs Justice Sharp found "no evidence at all" that he lacked sufficient resources to challenge the intervention when all that would have been required in the first instance was the court fee to issue a claim. However, had he genuinely been unable to pay the fee it would have been open to him to apply to the SRA's nominated agent for the release of some of CGL's frozen practice money to use for that purpose (see paragraph 27 above). Furthermore, the Court of Appeal queried whether legal assistance was even necessary, since the proceedings were not especially complex and the applicant was a solicitor who should have been well able to deal with the allegations against him (see paragraph 31 above). Although the Court is not bound by the findings of domestic courts, it will normally require cogent elements to lead it to depart from their findings of fact (*Gäfgen v. Germany*, cited above, § 93) and in the present case the applicant has not been able to point to any "cogent elements" which would persuade it to depart from the domestic courts' conclusions concerning either his impecuniosity or his ability to deal with the allegations against him without access to legal assistance.

61. Of greater concern is the fact that the Report setting out the reasons for the intervention was only served on the applicant on 21 December 2009, some days after the expiry of the time-limit for challenging the intervention. Indeed, the Court of Appeal found it "difficult to understand" why the Report and the case-note had not been disclosed to him prior to the expiry of the eight-day time limit, and considered there to be "some merit" in the contention that it may have been difficult for him to have pursued proceedings without it (see paragraph 31 above). Nevertheless, the court concluded that even without the Report the applicant would have had enough information at the time of the intervention in order to challenge it. Were this not the case, Mrs Justice Sharp observed that the applicant could have asked for a copy of the Report during the eight-day window for challenging the intervention (see paragraphs 26 and 50 above). Alternatively, he could have attempted to challenge the intervention following receipt of the Report, and asked the High Court to exercise its discretion exceptionally to extend the time-limit in order to give practical effect to his Convention rights. In this regard, the Court has accepted that on account of its incorporation into United Kingdom law, applicants can expressly invoke their Convention rights before the national courts, citing

the relevant case-law of this Court (see *Peacock v. the United Kingdom* (dec.), no. 52335/12, § 37, 5 January 2016). Section 7 of the HRA 1998 allows Convention rights to be relied upon in any proceedings where it is alleged that a public authority has acted in a manner incompatible with Convention rights, and section 3(1) requires that primary legislation be interpreted in a manner compatible with Convention rights wherever possible (see paragraph 37 above). In the present case the Court of Appeal did not exclude the possibility that the eight-day time-limit could be read down in exceptional circumstances (see paragraph 31 above). Consequently, it cannot be said that according to "settled legal opinion existing at the relevant time", such a remedy would have offered no reasonable prospects of providing redress.

62. In light of the above findings, the Court is not persuaded that either the applicant's alleged impecuniosity or the failure to disclose the Report within the eight-day time-limit amounted to "special circumstances" absolving him from exhausting this remedy.

63. The question could then arise whether the claim for damages for breach of the HRA 1998 – another remedy which the Court has, in principle, found to be effective and available in theory and in practice, and to offer reasonable prospects of success (see paragraph 58 above), would be sufficient to exhaust domestic remedies. The Court observes in this connection that the applicant's claim for damages was held by the domestic courts to be "hopeless and doomed to failure" (see paragraph 25 above) and an "abuse of the process" (see paragraph 26 above). The principle reason for this finding appears to have been that in the claim lodged on 6 December 2010, he only sought to challenge the statutory scheme and not its application in his case (see paragraph 21 above). However, he brought the claim against the SRA, which had not been responsible for the impugned legislation, and as a consequence it could not be held liable for any breaches of his human rights that might have resulted from it (see paragraph 25 above). It is true that he subsequently sought permission to amend the particulars of claim to include a claim that the manner in which the statutory scheme was operated by the SRA – and in particular the process which led to the decision to intervene in CGL – had breached his Convention rights on the specific facts of his case (see paragraph 24 above). However, not only did the amended grounds not include any complaint concerning the failure to provide him with the Report before the expiry of the eight-day time-limit, but in any case Mrs Justice Sharp found that the amended grounds had been notified to the SRA well outside the one-year time-limit for bringing claims under the Human Rights Act (see paragraph 28 above).

64. Therefore, in view of the fact that the applicant neither sought to challenge the intervention under the statutory procedure under Schedule 1, paragraphs 6(4) to the 1974 Act, nor raised the complaints upon which he now seeks to rely in the context of his claim for damages under the

HRA 1998, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (*Gäfgen v. Germany*, cited above, § 142), the Court finds that he has failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. This finding makes it unnecessary for the Court to decide whether the provisions he invokes – in particular Article 1 of Protocol No. 1 – are at all applicable to the facts of the case.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President