AS TO THE ADMISSIBILITY OF

Application No. 15007/89
by Roger PRINCE
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
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 2 March 1988 by Roger PRINCE against the United Kingdom and registered on 17 May 1989 under file No. 15007/89;

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 citizen born in 1944. He lives in London and is a barrister by profession.

This is his sixth application to the Commission. Applications Nos. 9096/80, 9522/81, 10331/83, 10904/84 and 11456/85 were declared inadmissible by the Commission on 5 May 1981, 4 October 1982, 16 December 1983, 18 May 1984 and 13 March 1986 respectively. In his first application he complained of his criminal conviction in 1978 for having travelled on a railway without having previously paid the fare and with intent to avoid payment thereof and for contravening a railway by-law. In his other applications he criticised the regulations governing the legal profession, in particular that of barristers, in England and Wales, the second and fifth applications referring to disciplinary proceedings brought by the Disciplinary Tribunal of the Senate of the Bar against the applicant for professional misconduct.

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

1. In February 1987 further disciplinary proceedings for professional misconduct, including incompetence, were instigated against the applicant by the Senate of the Inns of Court. These proceedings arose after a trial judge had complained of the applicant's conduct as defence counsel in the course of a criminal trial in October 1985.

On 21 August 1987 the applicant issued a writ for damages in defamation against six defendants, including members of the Bar administration who were involved in bringing the disciplinary proceedings against him. He also sought an injunction to restrain the defendants from further defaming him and from pursuing the disciplinary proceedings.

On 24 August 1987 the applicant issued a notice of motion, applying for an interim injunction pending trial of his action. On 10 September 1987 the defendants issued a notice of motion for an order that the applicant's case be struck out on the grounds that it was frivolous or vexatious, and/or an abuse of process. On 14 September 1987, on application by the defendants, the High Court dismissed the applicant's notice of motion and ordered that, until the applicant had paid the defendants' resulting costs on the motion, subsequently assessed at £2281.12, he should not be allowed to continue his action for damages. The applicant is unable to pay £2281.12 to the defendants. The further hearing of the defendants' motion was adjourned with liberty to restore.

2. In 1986 the applicant brought proceedings against the clerk and magistrates of the Magistrates' Court which in February 1980 issued a warrant for his arrest as he had failed to pay the fine imposed after his conviction in 1978. The action was struck out, the final decision, according to the applicant, being given on 10 January 1989.

3. The disciplinary hearing against the applicant went ahead on 13 April 1988. The applicant withdrew from the proceedings when he was refused an adjournment to allow his barrister to attend. The Disciplinary Tribunal considered that the applicant had had sufficient time (two years) since the proceedings started to find available counsel to represent him. The Tribunal decided that the applicant should be disbarred. He failed to appeal against this decision in time to the Visitors. The Lord Chancellor refused the applicant an extension of the time limit for appeal on 20 December 1988. Formal notice of disbarment was sent to the applicant on 23 January 1989.

COMPLAINTS

The applicant makes the following complaints:

1. that the costs order of 14 September 1987 denied him a hearing in the determination of his civil rights, contrary to Article 6 para. 1 of the Convention;

2. that the striking out of his claims against the clerk and magistrates was contrary to English law and also in breach of Article 6 para. 1 of the Convention;

3. that the refusal to accept his appeal against disbarment was ultra vires, as he claims, inter alia, to have lodged it within time;

4. that his disbarment deprived him of his civil rights, contrary to Article 6 para. 1 of the Convention, without a fair hearing.

THE LAW

The applicant has complained of various breaches of Article 6

para. 1 (Art. 6-1) of the Convention, the relevant part of which provides as follows:

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

1. The applicant has first complained that he is denied a hearing in the determination of his claim for damages against those responsible for organising the professional disciplinary proceedings against him until he pays their legal costs in the interim proceedings which he lost in September 1987. The Commission refers to its previous case-law in which it has held that Article 6 para. 1 (Art. 6-1) of the Convention does not prevent the Contracting Parties from regulating the manner in which the public can 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 and the litigation upon which the applicant has embarked, the Commission considers that it is not improper to require the applicant to pay the defence's costs in the unsuccessful interlocutory action which he initiated, before he can pursue his main claim any further. 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 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.

2. The applicant has also complained of the striking out of his claims against the magistrates and their clerk, culminating in a decision of 10 January 1989. However, the Commission finds no evidence in the case-file which might disclose any appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention in respect of this complaint. Accordingly this aspect of the case must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Finally the applicant has complained of his disbarment and the refusal to accept his appeal from that measure out of time. However, the Commission refers to its constant case-law that domestic remedies cannot be deemed to have been exhausted, as required by Article 26 (Art. 26) of the Convention, when an appeal is not admitted because of a procedural omission by the applicant (cf. No. 6878/75, Le Compte v. Belgium, Dec. 6.10.76, D.R. 6 p. 79 at p. 98). In the present case the applicant's appeal against disbarment to the Visitors was not lodged within the prescribed time limit and was, therefore, not accepted.

In these circumstances the Commission finds that the applicant has failed to exhaust domestic remedies and concludes that this aspect of the case must be rejected pursuant to Articles 26 (Art. 26) and 27 para. 3 (Art. 27-3) 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)