AS TO THE ADMISSIBILITY OF

Application No. 13250/87
by S.
against the United Kingdom

The European Commission of Human Rights sitting in private on 4 July 1988, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. J. RAYMOND, Deputy Secretary to the Commission

Having regard to Article 25 (Art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 2 March 1987 by S. against the United Kingdom and registered on 29 September 1987 under file No. 13250/87;

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 1922 and resident in Liverpool. He is represented before the Commission by Leslie Huckfield, a Member of the European Parliament.

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

The applicant alleges that at the age of six a consultant cardiologist erroneously diagnosed that he was suffering from a serious heart disease. In October 1981 on admission to hospital for a chest infection his heart was found to be in sound health. He claims that his whole life has been ruined because of the original diagnosis with a resultant loss of education, career prospects and quality of life, whilst medical authorities continued to impose unnecessary treatment and failed to detect the error over the years.

The applicant sought to sue the estate of the consultant, who had died, and the Liverpool Area Health Authority. He was granted legal aid in order to obtain the expert medical opinion of a consultant cardiologist (three times) and junior counsel's opinion (twice). The medical expert concluded that the original consultant's

diagnosis could not be deemed erroneous, given medical knowledge and techniques around 1930, and that it was likely that the applicant had been suffering from a congenital heart abnormality in his youth which had corrected itself. He also considered that the hospital authorities had not acted negligently in their treatment of the applicant's health problems from time to time. Given the various nervous symptoms which the applicant had displayed over the years, as well as his own description of his medical history, there may have been uncertainty on the part of the various hospital physicians treating the applicant whether the applicant's symptoms were entirely nervous or whether there was another underlying heart disease which normal testing could not fully verify. This may have left them in reasonable doubt and prevented them giving the applicant unreserved reassurance about the health of his heart until 1981; in which case they had not been negligent.

The applicant's solicitors apparently obtained access to certain of the applicant's medical records held by his general practitioner (GP), which were passed to the expert. From these records it appears that the applicant had not always been regarded by his GP as a man with heart disease.

Counsel rejected any possibility of litigation against the original consultant's estate and doubted the prospects of success of litigation against the Health Authority. He advised that the opinion of senior counsel be sought as to whether, inter alia, the sheltered life which the applicant had been obliged to lead because of his purported heart condition could amount to a "personal injury" and whether a non-personal injury claim would be time-barred by the rules relating to the limitation of actions, unless it related to medical treatment during the past six years. He also advised that further medical evidence would be necessary before litigation could be contemplated, without which it would be unlikely to succeed.

The applicant was offered the services of further medical expertise which would have involved a review of all his medical notes. These might have been made available to the newly appointed consultant on a "doctor-to-doctor" basis, but the applicant could not afford the £250 fee involved and no further legal aid was granted.

The local General Committee refused him further legal aid on 12 December 1984. After a change of solicitors and a fresh application and appeal, legal aid was again refused by the Legal Aid Area Committee on 31 July 1985 on the grounds that "there was not, nor could be made available any evidence to support a claim against the proposed defendant or any other specific defendant".

In about January or February 1986 the applicant's attempt to litigate in person apparently failed.

Since then the applicant has approached, inter alia, a Member of Parliament, the Lord Chancellor and the Health Service Ombudsman, the latter concluding that he could not intervene to determine whether a patient's treatment had been negligent and that he had no competence to award compensation, these being matters for the civil courts.

The applicant claims that he cannot proceed further because he cannot afford litigation costs and because he cannot have access to his own medical records.

COMPLAINTS

In correspondence with the Commission the applicant stated that his basic complaint is that the refusal of legal aid to enable the courts to determine his case is a betrayal of legal aid legislation. He has been burdened with a non-existent heart condition

for 54 years, which has ruined his life.

In his formal application to the Commission the applicant invoked Article 10 (Art. 10) of the Convention (right to receive information) on the grounds that he has allegedly been refused access to his medical records, which access was necessary to discover whether the Health Authority had acted negligently.

THE LAW

The applicant has complained that he has been refused legal aid and access to certain medical records. He has invoked Article 10 (Art. 10) of the Convention which ensures freedom of expression, including freedom to receive and impart information, subject to various limited exceptions.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case it appears from the submissions of the applicant that the proceedings in his case effectively ended on 31 July 1985 when the Legal Aid Area Committee refused him further legal aid. His attempts to litigate in person in January and February 1986 apparently did not lead to any judicial decision on the merits of his case. For the purposes of Article 26 (Art. 26) of the Convention the Commission therefore concludes that the final decision in the circumstances of the present case was that of the Legal Aid Area Committee on 31 July 1985. However the application was submitted to the Commission on 2 March 1987, that is more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(J. RAYMOND) — (C.A. NØRGAARD)