AS TO THE ADMISSIBILITY OF

Application No. 23858/94
by David SINANAN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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 August 1993 by David SINANAN against the United Kingdom and registered on 12 April 1994 under file No. 23858/94;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 24 November 1995 and the observations in reply submitted by the applicant on 31 December 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of Trinidad and Tobago born in 1937 and resident in Portsmouth. The facts of the case, as submitted by the applicant may be summarised as follows.

In January 1983 two sets of proceedings were commenced against the applicant in respect of unpaid invoices. The applicant appointed a firm of solicitors to act on his behalf. The applicant was given leave to defend these actions on the condition that he paid £10,000 into court in relation to one set of proceedings, and £750 into court in respect of the other set of proceedings. It appears that these sums were never paid and judgments were entered against the applicant in 1983. Leave to appeal out of time against the judgment was sought in respect of one set of proceedings, this was refused in February 1984. The applicant was subsequently involved in disputed bankruptcy proceedings. He was adjudged bankrupt on 17 October 1984. This order

was set aside on 27 January 1986 on procedural grounds and remitted to the county court. The applicant was adjudged bankrupt for a second time on 24 June 1988.

On 5 January 1988 the applicant issued a writ, thereby commencing an action in negligence ("the negligence proceedings"), against the firm of solicitors ("the defendants"), who had represented him in the two proceedings concerning unpaid invoices.

On 26 February 1988 the defendants issued a summons for the applicant to serve a statement of claim. The applicant served a statement of claim dated 11 April 1988, claiming the sum of £547,403.23.

The defendants issued a summons on 27 May 1988 to strike out the statement of claim as an abuse of process, on the grounds that it disclosed no reasonable cause of action. A Private Room Appointment before the Master was fixed for 21 October 1988. On 19 October 1988 the applicant issued a notice of change of solicitors and the application was thus adjourned until 7 February 1989. On 7 February 1989, the applicant intimated that he did not wish his solicitors and counsel to act for him and the Master thus ordered all proceedings to be stayed for three months, with the condition that if no application to lift the stay was made, the proceedings would be dismissed.

On 28 April 1989, a new firm of solicitors acting for the applicant, issued a summons applying for the lifting of the stay and for leave to serve an amended statement of claim. A date was given in the general list for the hearing of the summons on 17 July 1989. On or about 23 June 1989, solicitors for the applicant withdrew the case from the general list and applied to the Master for a Private Room Appointment. The Master gave a hearing date of 8 November 1989. The defendants issued a summons seeking to strike out the applicant's claim, to be heard on the same date. At the hearing on 8 and 9 November 1989, the Master dismissed the defendants' summons and granted the applicant leave to serve an amended statement of claim.

On 15 November 1989, the defendants appealed against the Master's decision. At a hearing on 16 February 1990, His Honour Judge Hammerton allowed the appeal, struck out the statement of claim and dismissed the applicant's action.

On 29 March 1990, the applicant's solicitors lodged a notice of appeal. The applicant completed the appeal bundle on 13 June 1990. The appeal was assigned to the short warned list on 14 November 1990. On 2 December 1990, at the request of the applicant, the appeal was stood out of the list until after 3 January 1991. The defendants then requested that the appeal be further stood out until 15 January 1991. On 20 February 1991, the Court of Appeal heard and dismissed the applicant's appeal.

The applicant had one month in which to lodge a petition for leave to appeal to the House of Lords. The applicant's solicitors informed the judicial office of the House of Lords, that legal aid was being applied for and thus the period for lodging of the petition was extended to one month after the final determination of the legal aid application.

The applicant's application for legal aid was received by the Legal Aid Board on 2 May 1991. On 17 July 1991 the Legal Aid Board issued a certificate enabling the applicant to obtain the opinion of senior counsel. On 12 August 1991 the Legal Aid Board received this advice, and the Legal Aid Board granted a further extension to the legal aid certificate to obtain a further opinion from senior counsel. On 27 February 1992 this was submitted and on 3 April 1992 the legal aid certificate was frozen as the Legal Aid Board considered counsel's opinion was not favourable to continuing the action. Correspondence

followed, and on 25 September 1992 the certificate was discharged.

On 28 September 1992 a petition of leave to appeal against the Court of Appeal's decision, was lodged at the judicial office of the House of Lords.

An appeal against the Legal Aid Board's decision to discharge the legal aid certificate was dismissed by the Area Committee on 8 December 1992.

A petition for leave to appeal was presented to the House of Lords on 18 January 1993 and was refused on 10 March 1993.

The total duration of the proceedings was five years two months, from the issue of the writ, on 5 January 1988, to 10 March 1993, when the applicant's petition for leave to appeal to the House of Lords was refused.

COMPLAINTS

The applicant alleges that all of the crucial matters in his case were decided in camera and that he was thus not given a fair and public hearing in accordance with Article 6 para. 1 of the Convention. He complains that the bankruptcy proceedings against him constituted a violation of Article 1 of Protocol No. 1 of the Convention.

The applicant further complains that the length of proceedings exceeded a reasonable time, in violation of Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 13 August 1993 and registered on 12 April 1994.

On 6 September 1995 the Commission decided to communicate the application to the respondent Government, and requested submissions in respect of the length of proceedings complaint.

The Government's written observations were submitted on 24 November 1995. The applicant replied on 31 December 1996, after three extensions of the time limit fixed for that purpose, the final time limit being 15 March 1996.

On 10 September 1996 the Commission refused the applicant legal aid.

THE LAW

1. The applicant makes various complaints under Article 6 (Art. 6) and Article 1 of Protocol No. 1 (P1-1) in relation to the proceedings concerning unpaid invoices and the bankruptcy proceedings.

The Commission notes that in all proceedings, save the negligence proceedings, the final decisions were given in 1983, 1984 and in respect of the bankruptcy in 1988. These final decisions are more than six months before the date on which the application was introduced on 13 August 1993.

It follows that in accordance with Article 26 (Art. 26) the complaints relating to all the litigation, save the negligence proceedings, must be rejected as inadmissible under Article 27 para. 3 (Art. 27-3) of the Convention, as being submitted more than six months after the final decision.

2. The applicant complains that the essential parts of the negligence proceedings were heard in camera, and that this constituted

a violation of Article 6 (Art. 6).

Article 6 para. 1 (Art. 6-1) of the Convention provides, so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ... against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

With regard to the negligence proceedings, the Commission notes that the Court of Appeal heard the applicant's appeal and gave judgement in open court. The Court of Appeal were unfettered in their review of the striking out of the applicant's proceedings by the Judge. The Commission recalls that Article 6 para. 1 (Art. 6-1) is satisfied if there is an appeal body with full jurisdiction that does comply with the requirement of "a public hearing" (Eur. Court HR, Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p. 23, para. 51). The applicant's complaint that his case was not given a public hearing is thus misconceived.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the negligence proceedings.

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

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal ...."

The respondent Government submit that much of the time prior to the defendants' successful striking out of the applicant's statement of claim (22 months) was the responsibility of the applicant and that where it was not, the time taken was reasonable in the circumstances. They submit that the period between strike out and review by a single judge (3 months), and the subsequent period before review by the Court of Appeal (11 months), were reasonable. They state that the final two year delay, concerning the petition for leave to appeal to the House of Lords, was largely the responsibility of the applicant.

The applicant submits that the length of proceedings was unreasonable in the circumstances, and in particular complains of a lack of diligence by the Legal Aid Board, that he alleges contributed substantially to the length of the proceedings.

The Commission recalls that the reasonableness of the length of proceedings must be assessed according to the particular circumstances of the case. The Commission has regard to the complexity of the case, the conduct of the applicant and the conduct of the judicial authorities (Eur. Court HR, Vernillo v. Italy judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

The Commission does not consider that the present case was unduly complex.

As regards the conduct of the parties, the Commission recalls that it should be borne in mind that only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (Eur. Court HR, H v. France judgment of 24 October 1989, Series A no. 162, pp. 21-22, para. 55).

The Commission considers that the delays during the 22 months

prior to the statement of claim being struck out, were largely attributable to the applicant's conduct of the case. The applicant took over 3 months from service of the writ to serve a statement of claim. Further, between 21 October 1988 and 8 November 1989, the case was adjourned three times as a result of the applicant's conduct of the case, namely: changing solicitors, dispensing with legal representation at a hearing and seeking to transfer the case from the general list to a Private Room Master's appointment.

The Commission considers the three months between striking out and the appeal hearing before a single judge to be reasonable. During the 11 month period from notice of appeal being lodged and the hearing before the Court of Appeal, the applicant took two and a half months to prepare an appeal bundle and the case was twice adjourned (once at the request of the applicant and once at the request of the defendant).

During the two year period between the Court of Appeal's judgment and the House of Lord's refusal of the petition for leave to appeal, the Commission notes that delay was caused by the application for legal aid. However, six months of this delay was due to the time taken by solicitors acting for the applicant to submit two written opinions of senior counsel to the Legal Aid Board.

Having regard to all the circumstances of the case and, more particularly, to the applicant's conduct in the course of the proceedings, the Commission concludes that, although some of the delays could probably have been avoided, they are not sufficiently serious to warrant the conclusion that the proceedings were not conducted "within a reasonable time", within the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber