AS TO THE ADMISSIBILITY OF

Application No. 26663/95
by Victor TEE
against The United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 28 February 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 3 November 1994 by Victor Tee against The United Kingdom and registered on 8 March 1995 under file No. 26663/95;

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

The applicant is a United Kingdom national born in 1948 and residing in Winchester, Hampshire. He is currently unemployed.

I.

For about 6 years prior to the events at issue the applicant was a self-employed representative of a life insurance company, selling its policies. In 1989 he discontinued this activity and formed with some of his associates The Winchester Group plc ("Winchester") to trade in the life insurance business.

The applicant is a 51% shareholder of Winchester. At the relevant time he was not on Winchester's board of directors and only worked as its self-employed representative. In March 1990 Winchester became an appointed representative of Norwich Union Life Insurance Society and its three associated companies ("Norwich Union").

Based on information allegedly connecting the applicant and a director of Winchester with persons charged with fraud, an investigation into the business of Norwich Union, conducted through Winchester, was commenced on or about 15 October 1990. This was

undertaken by the Life Assurance and Unit Trust Regulatory Association ("LAUTRO"), a self regulatory organization, entrusted by virtue of the Financial Services Act 1986 with certain supervisory and regulatory powers. Norwich Union was a member of LAUTRO, whereas Winchester was not.

A representative of LAUTRO visited Winchester's offices and removed about 1000 client files, bank statements and other documents.

On October 1990 LAUTRO issued a Notice of Exercise of Intervention Powers which was binding on Norwich Union. In its operative part the notice prohibited Norwich Union from "accepting any new investment business from Winchester or any company representative of Winchester ..." and from "soliciting investment business from members of the public through Winchester...". The intervention notice stated that it had immediate effect.

The grounds for the prohibition were that there were "serious deficiencies in Norwich Union's internal systems for monitoring the performance of Winchester and in particular ensuring that [it] complied with the Code of Conduct". This conclusion was based on evidence showing inter alia "undesirable selling practices" and ties between the applicant and persons charged with fraud which called into question whether the applicant and other Winchester managers "could be regarded as being of good character and competent or otherwise suitable to manage the marketing of investment contracts on behalf of Norwich Union...".

On the same date a press release was issued by LAUTRO, which announced the prohibition imposed on Norwich Union. It stated, inter alia:

> "The Board [of LAUTRO] took the view that the reports called into question whether certain of the controllers, directors and senior managers of Winchester were fit and proper, competent and otherwise suitable to manage the marketing of investment contracts on behalf of Norwich Union."

Some journalists published materials based on the press release. One journalist claimed that he had telephoned LAUTRO and had obtained details from a Mr. J. As a result the applicant's name appeared in some publications, which referred to him as the founder and proprietor of Winchester.

On 31 October 1990 a copy of the intervention notice was served both to Winchester and to the applicant personally. The covering letter addressed to the applicant stated that this was done pursuant to LAUTRO's rule 7.3(12) as the applicant was a person to which the matters referred to in the notice might be prejudicial.

Under LAUTRO's rules Norwich Union had the right to appeal against the intervention notice, but it did not do so. Instead, it terminated its contract with Winchester. Under the same rules, as in force at the relevant time, a person in the position of Winchester and of the applicant could not appeal against the intervention notice.

Nevertheless the applicant objected against the notice. As a result on 6 November 1990 a meeting was held between the applicant, representatives of Winchester, and LAUTRO. At the meeting the applicant was heard but was not given details, other than those contained in the intervention notice, of the investigation undertaken by LAUTRO.

LAUTRO's investigation continued for more than a year. In December 1991 the applicant was allowed to make representations before it. Also, the draft final report was provided to Winchester and to the applicant for comments. In the final report the allegations of

ties with criminals were dropped, but the other grounds for the intervention notice, namely departures from highest professional standards, were confirmed. On this ground the prohibition imposed on Norwich Union as regards its business with Winchester was continued.

On 2 March 1992 LAUTRO issued a press release concerning its final report. It stated inter alia that the investigation had revealed no evidence to support the initial suspicion that a person, arrested for fraud, had been involved in the business of Winchester.

II.

On 10 December 1990 Mr. R., director of Winchester, applied for judicial review to set aside the intervention notice of 30 October 1990 on grounds that no representations of those concerned had been allowed prior to its issuance. The application was refused by a Divisional Court on 5 July 1991 and the ensuing appeal was dismissed by the Court of Appeal on 11 June 1992.

On 17 January 1991 Winchester and the applicant submitted to the High Court an application for judicial review to set aside the intervention notice. It was claimed inter alia that Winchester and the applicant had been denied natural justice in that they had not been heard by LAUTRO prior to the issuance of the notice and that the meetings which had taken place afterwards did not satisfy the requirements of natural justice. Following an adjournment pending the outcome of the proceedings brought by Mr. R. against the same intervention notice, on 31 March 1993 the High Court dismissed the application. It found that the applicant should not be allowed to raise a complaint which should have been brought in the proceedings instituted by Mr. R. and concluded on 11 June 1992. Also, LAUTRO did not owe a duty of fairness to the applicant as its acts concerned directly Norwich Union and consequently Winchester, but not the applicant.

The applicant, but not Winchester, appealed. The Court of Appeal in its judgment of 6 May 1994 overturned the lower court's finding that LAUTRO did not owe the applicant a duty of fairness. The Court also noted that after the events at issue, in November 1991, the pertinent LAUTRO rules had been amended so as to allow a right to appeal against an intervention notice to everyone served with it. The applicant did not have a right to appeal. However, he was given, albeit belatedly, a possibility to make representations. Therefore and in the light of the subsequent confirmation of the allegation of administrative lapses the Court did not quash the intervention notice.

COMPLAINTS

The applicant complains that he was subjected to an arbitrary interference with his private life in that his reputation and honour were severely damaged by the intervention notice, the press release and all other measures undertaken by LAUTRO. He also complains that as a result his business was ruined and that this amounted to deprivation of his property.

The applicant further complains under Articles 6 and 13 of the Convention. Thus, the proceedings before LAUTRO were in breach of his right to a public hearing and to a fair trial in the determination of his civil rights and obligations. Also, he did not have an effective remedy against the alleged arbitrary interference with his professional reputation and against the infringement of his property rights.

THE LAW

1. The applicant complains that the acts of the self-regulatory organisation LAUTRO resulted in violations of his rights under the Convention.

The Commission need not decide whether the United Kingdom authorities may be held responsible for the acts of LAUTRO, entrusted with certain supervisory and regulatory powers under the Financial Services Act 1986, as in any event the application is inadmissible for the following reasons.

2. The applicant complains that he was subjected to an arbitrary interference with his private life. The Commission has examined this complaint under Article 8 (Art. 8) of the Convention which, insofar as relevant, provides as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls the Convention organs case-law according to which it is consonant with the essential object and purpose of Article 8 (Art. 8) of the Convention, namely to protect the individual against arbitrary interference by the authorities, to interpret the words "private life" as including certain professional activities. Thus, an interference with the professional reputation of an individual may, in certain circumstances, fall to be examined under Article 8 (cf. Eur. Court H.R., Niemietz judgment of 16 December 1992, Series A no. 251-B, p. 33, para. 29; Appl. No. 17101/90, Dec. 15.5.92, unpublished; Appl. No. 23953/94, Dec. 6.9.95, D.R. 82, p. 51, 54).

In the present case the Commission need not decide whether the applicant, who has not challenged the publication of LAUTRO's press release, has exhausted domestic remedies in this respect, and whether the impugned acts of LAUTRO amounted to an interference with the applicant's rights under Article 8 (Art. 8) of the Convention as in any event, even assuming that there was an interference, it would have been justified under the second paragraph (Art. 8-2) of this provision.

Thus, the measures undertaken by LAUTRO were based on the Financial Services Act and on the LAUTRO rules, and aimed at the protection of consumers. They concerned exclusively Norwich Union and Winchester and were not disproportionate to the aim pursued. Thus, such intervention measures would not be effective if the regulatory authority could not impose provisional prohibitions with immediate effect. Furthermore, LAUTRO refrained from referring to the applicant in its press release and did not expose him to any unnecessary or arbitrary encroachment on his reputation. LAUTRO considered his arguments which were admitted in the process of investigation and promptly issued a second press release, thereby clearing him of any possible implication of dishonesty.

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 also complains that the impugned measures by LAUTRO ruined his business and thus amounted to a deprivation of his property.

The Commission, having examined this complaint under Article 1 of Protocol 1 (P1-1) to the Convention, recalls the Court's case law according to which a shareholder cannot claim to be a victim of an alleged violation of "his" company's rights under Article 1 of Protocol 1 (P1-1) save where exceptional circumstances had prevented the organs

of the company from acting (see Eur. Court H. R., Agrotexim judgment of 24 October 1995, Series A no. 330, paras. 59-72).

In the present case the applicant complains that LAUTRO's intervention notice ruined the business of Winchester, a company which has its own legal personality. The applicant has not substantiated any circumstances which would have prevented Winchester from acting. In fact Winchester did institute domestic proceedings but did not join the applicant in his appeal. Therefore the applicant cannot claim to be a victim of an alleged violation of Winchester's rights under Article 1 of Protocol 1 (P1-1) to the Convention.

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

4. The applicant complains under Article 6 (Art. 6) of the Convention that LAUTRO breached his right to a public hearing and to a fair trial in the proceedings concerning the issuance and the confirmation of the intervention notice.

Article 6 (Art. 6) of the Convention, insofar as relevant, reads as follows:

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

Insofar as the applicant may be understood as claiming that Article 6 (Art. 6) was breached in the determination of his civil right to a good reputation, the Commission recalls the Convention organs' case-law according to which an investigation on factual matters in the United Kingdom, effected by inspectors acting under the Companies Act 1985, was found not to involve "determination" of a civil right to a good reputation (Eur. Court H.R., Fayed v. the United Kingdom judgment of 21 September 1994, Series A no. 294-B, para. 61).

The Commission considers that the functions and powers of LAUTRO in the present case were such that its acts can by no means be considered as having the effect of determining the applicant's right to a good reputation. It is true that the applicant's activities were examined during LAUTRO's investigation. However, the purpose of the investigation was to adopt measures regulating the business activities of Norwich Union, which in consequence affected Winchester. LAUTRO's intervention notice had no legal effect on the applicant.

Insofar as the applicant may be understood as referring to his alleged civil right to engage in the insurance business, such a right of his, similarly, was not affected by the impugned acts of the regulatory authority.

Therefore Article 6 (Art. 6) of the Convention, as far as the applicant's rights are concerned, was not applicable in the proceedings before LAUTRO in the present case. It follows that this part of the application has to be rejected as incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant also complains under Article 13 (Art. 13) of the Convention that he did not have an effective remedy against the alleged arbitrary interference with his professional reputation and against the infringement of his property rights.

The Commission recalls the Convention organs' case-law according to which Article 13 does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a

violation of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, para. 52).

The Commission finds that the facts of the present case fail to disclose an "arguable" claim of a violation of Article 8 (Art. 8) or Article 1 of Protocol No. 1 (P1-1) to the Convention. Consequently, the applicant cannot derive from Article 13 (Art. 13) of the Convention a right to a remedy for the alleged violations.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)