AS TO THE ADMISSIBILITY OF

Application No. 26270/95
by James TUOHY
against Ireland

The European Commission of Human Rights (First Chamber) sitting in private on 16 October 1996, the following members being present:

Mr. M.P. PELLONPÄÄ, Acting President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A. WEITZEL
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

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 20 December 1994 by James TUOHY against Ireland and registered on 24 January 1995 under file No. 26270/95 ;

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 applicant is an Irish national, was born in 1937 and is resident in County Cork, Ireland.

A. The particular circumstances of the case

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

In December 1978 the applicant and his wife purchased a house (the first residence). The applicant believed, from the legal advice he received, that he was purchasing a leasehold interest relatively easily convertible into a freehold interest. On 1 October 1982 the applicant's lawyer sent the title deeds of the property to the applicant. In March 1983 (a date later accepted by the High Court) the applicant read the title deeds. He noticed for the first time that his title in the first residence was "a lease" and that there were some additional obligations attaching to the property of which he had not been made aware. While the applicant was upset, he still believed that his title was as he had been advised by his solicitor.

On 4 January 1985, in answer to his solicitor's demands (dated 29 May and 30 November 1994) for payment of fees as regards the

conveyance, the applicant wrote in the following terms to his solicitor:

> "When my wife and I asked you what the £42.50 related to, you told us quite definitely that it was the ground rent on <the property>. When we asked you if we could buy it out, you said we could and you mentioned a figure of £2500.00. You can imagine our dismay and horror when we discovered that the £42.50 was in respect of a lease. In view of the above I would strongly suggest that you revise your fees."

When the applicant's solicitor in his response did not deal with the matters raised by the applicant, the applicant wrote again raising the same matters and again noted his "amazement and horror" in discovering that the title was a leasehold. In light of the "incompetent and negligent handling of the business entrusted" to his solicitor the applicant again suggested a significant revision of the fees charged.

In the meantime, the applicant had been building a new family home (a second residence) which would be financed in part by his equity in the first residence. After an offer to buy the first residence had fallen through, the applicant's new solicitor advised him in or around July 1985 of the true nature of his title in the property. The applicant claims (and it was accepted later by the High Court) that this was the first time that he became aware of the true nature of the title in the first residence and of its substantially reduced value.

On 10 April 1987 the applicant commenced negligence proceedings against, inter alia, his previous solicitor. The defence raised section 11 of the Statute of Limitations 1957 ("the 1957 Act") arguing that the proceedings were out of time. It was also argued in defence that the delay in issuing the proceedings was, even if not statute barred, inordinate and inexcusable. The High Court ordered that the timeliness of the proceedings be tried as a preliminary issue. The applicant then added a submission that if his claim was statute barred then the relevant sections of the 1957 Act were unconstitutional.

On 9 April 1991 the High Court held that the matter was statute barred by section 11 of the 1957 Act. Further to a submission by the Attorney General, it was decided by the High Court that the applicant's locus standi to raise the constitutional issue must be established. In order to do this, the High Court heard submissions as to the facts of the case and as to whether, apart from the time-limit issue, the applicant had a cause of action and as to whether the delay in issuing the proceedings was, in any event, inordinate and inexcusable.

The High Court gave its judgment on these issues on 3 September 1992. As to the facts, the High Court found that the applicant had first read the title deeds in March 1993 and that despite the terms of his letters dated 4 January and 20 May 1985, he did not understand the significance of the difference between the title he believed he purchased and that which he actually purchased until in or around July 1985 when he was advised by his new solicitor. It was also accepted that the six year time-limit ran out as and from 19 September 1984 (at the earliest) or 18 December 1984 (at the latest) and that the applicant was accordingly aware for at least eighteen months (if not for 21 months) that the title to the relevant property was not what he believed he had purchased. He was, in the High Court's view, in an analogous position to that of persons who had suffered personal injury but who were not aware that the injury was significant, which latter persons benefitted from a date of discoverability rule by virtue of the Statute of Limitations (Amendment) Act 1991 ("the 1991 Act").

The High Court accepted that the applicant had locus standi to bring the constitutional issue since it found that, apart from the

time-limit issue, the applicant's former solicitor had been negligent as regards the advice given in relation to the sale of the property and that the applicant would be entitled to damages. The High Court went on to find that there had not been inordinate and inexcusable delay on the part of the applicant in issuing the proceedings as alleged and concluded that section 11 of the 1957 Act was not unconstitutional.

The applicant appealed to the Supreme Court, which court also accepted that the applicant, whilst aware of facts within the six year time-limit which led him to the conclusion that the solicitor had been negligent, was unaware until after the expiry of the time-limit that he had suffered any significant loss which would warrant the issuance of proceedings. It was also accepted that the applicant could not, by steps which he might have been reasonably expected to take, have become aware of the true position and his true loss before the summer of 1985.

However, the Supreme Court recognised the purposes of the time-limit as being the protection of defendants against stale claims together with the promotion as far as possible of expeditious trials (with evidence which has the accuracy of recent recollection) and of a certain finality in potential claims. The necessity as far as is practicable to ensure that such time-limits do not unreasonably or unjustly impose hardship on potential litigants was the countervailing interest. Having made its evaluation, the Supreme Court found that the time-limit was objectively viewed as a substantial period, the legislation could be seen to be supported by just and reasonable reasons and it was not unconstitutional.

B. Relevant domestic law and practice

Pursuant to Article 40 (3) of the Irish Constitution, the State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen.

Pursuant to Article 43 of that Constitution, the State acknowledges that man has the natural right, antecedent to positive law, to the private ownership of external goods and the State, accordingly, guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath and inherit property. Pursuant to that Article the State also recognises that the exercise of the afore-mentioned rights ought, in civil society, to be regulated by the principles of social justice and the State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

Section 11(1)(b) of the Statute of Limitations Act 1957 lays down a six year time-limit, running from the date on which the cause of action accrued, for actions in negligence. A specific fixed time-limit of three years was also laid down for actions in, inter alia, negligence for personal injury. Pursuant to Part III of the 1957 Act, the time-limit applicable to a plaintiff under a disability (which includes a minor or a person of unsound mind) begins to run from the end of the disability. Where a cause of action is based on the fraud of the defendant or where the right of action is concealed by the defendant, the time-limit does not begin to run until the plaintiff has discovered the fraud or could, with reasonable diligence, have discovered the fraud.

The Statute of Limitations (Amendment) Act 1991 ("the 1991 Act") came into effect in 1991 and applied to all causes of action accruing either before or after its passing and to proceedings pending at its passing. Pursuant to section 3 of the 1991 Act the time-limit for personal injuries' actions can commence from the date when the

potential plaintiff became aware of a significant injury attributable to, inter alia, the negligence of an identifiable defendant.

COMPLAINTS

The applicant complains under Article 6 of the Convention that, even though the domestic courts recognised that he had a good cause of action against his former solicitor, he is barred from pursuing this action by a fixed time-limit. The applicant also raises Article 14 in conjunction with Article 6 of the Convention arguing that Irish law discriminates against him in view of the flexible time-limits applicable to persons with personal injury actions, those under a disability, minors and those suing for fraud. The applicant also complains under Article 1 of Protocol 1 that his property rights were unjustifiably interfered with by the operation of the time-limit. The fact that a fixed time-limit applies to negligence resulting in financial loss and an interference with property rights and that a more flexible period applies when the negligence results in personal injury constitutes a difference in treatment contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol 1.

THE LAW

1. In the first place, the applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that he was barred from issuing negligence proceedings when he had no conceivable way of ascertaining, from his own limited knowledge of a technical area of the law, that his solicitor had given negligent advice. He points out that the effect of this was that he is excluded from having any access to court when it has been recognised that his cause of action was good. Article 6 para. 1 (Art. 6-1) of the Convention provides in its first sentence:

> "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."

The Commission considers that the matter at issue is one of access to court for the determination of the applicant's civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention and recalls that Article 6 para. 1 (Art. 6-1) secures to everyone the right to have any claim relating to his or her civil rights brought before a court or tribunal (see, for example, Eur. Court HR, Golder v. the United Kingdom judgment of 21 February 1975, Series A no. 18, p. 18, para. 36).

However, such a right of access to court is not absolute and may be regulated by States which have a certain margin of appreciation. Limitations on this right must not be applied in such a way as to impair the very essence of the right, must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see Eur. Court HR, Ashingdane v. the United Kingdom judgment of 28 May 1985, Series A no. 93, pp. 24-25, paras. 55-57)

Furthermore, the Commission has previously accepted, in the interests of the good administration of justice, that the imposition of time-limits (including time-limits that cannot be waived) within which prospective proceedings must be introduced can constitute an acceptable restriction on the right of access to court. It has been accepted that time-limits imposed with the purpose of preventing stale claims and the possible injustice to defendants faced with evidential difficulties in contesting allegations relating to distant events and of promoting legal certainty have a legitimate aim (Stubbings and Others v. the United Kingdom, Comm. Report 22.2.95).

In the present case, the Commission does not consider that the very essence of the applicant's right was impaired since an action in negligence was open to him for six years after the purchase of the first residence. As regards the legitimacy of the aims, the applicant submits that the question of stale claims and prejudice to the defence as regards evidential matters were not relevant in his case since the High Court found there would be no prejudice to the defence in proceeding with the action and since the High Court, in establishing the locus standi of the applicant to bring a constitutional action, established the facts from evidence submitted, concluded that the applicant's solicitor had been negligent and assessed damages.

While the Commission notes the findings of the High Court reached in order to establish locus standi, the Commission also recalls that in fact the High Court found that there had not been inordinate and inexcusable delay on the part of the plaintiff in issuing the proceedings which finding does not amount to, as the applicant argues, a finding as to a lack of prejudice to the defence. It is also noted by the Commission that the legitimate consideration of legal certainty remains pertinent to the present application.

As regards the proportionality of the time-limit, the Commission notes the applicant's submission as to his complete inability to discern a cause of action within the time-limit because of the technical area of the law involved, that it only became clear to him that he had a substantive cause of action when he happened to obtain advice from another solicitor when he was selling the property and that he was therefore unreasonably excluded from access to court. However, the Commission's case-law has established that the need for legal certainty may justify the imposition of time-limits which cannot be waived even when new facts arise after the expiry of the relevant time-limit (No. 9707/82, Dec. 6.10.82, D.R. 31 p. 223). The Commission also refers to the six-month time-limit set down by Article 26 (Art. 26) of the Convention and to its own strict approach in this respect (see, for example, No. 10416/83, K v. Ireland, Dec. 17.5.84, D.R. 38 p. 158).

The Commission also notes that the relevant time-limit was six years. In addition and even following the finding of the domestic courts that the applicant did not realise until in or around July 1985 that he had a substantial action against his former solicitor, the Commission considers the strong terms of the applicant's letters of January and May 1985 persuasive. While written outside the relevant time-limit, these letters demonstrate the applicant's dismay, horror and amazement having read the title deeds which he did in March 1983. Having so reacted and in order to assure himself of the nature of his title, the applicant had at least eighteen months before the time-limit ran out to obtain another opinion on the nature and value of his title in his property. In any event, the applicant could have simply filed a plenary summons in the High Court in order to stop the time running if he required more than an eighteen month period to clarify his position.

In such circumstances, the Commission considers that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also raises Article 14 in conjunction with Article 6 (Art. 14+6) of the Convention arguing that the provisions of section 11 of the 1957 Act discriminate against him because certain other categories of litigant (those with personal injury actions, those under a disability (including minors) and those suing for fraud have the benefit of more flexibility in this respect namely, a date of discoverablity rule. He relies on the above-cited Commission's report in the Stubbings application. Article 14 (Art. 14) of the Convention provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 14 (Art. 14) of the Convention safeguards individuals placed in analogous situations from any discrimination in the enjoyment of the rights and freedoms set out in the Convention and Protocols. Whether a difference in treatment constitutes such discrimination depends on whether or not that difference pursues a legitimate aim and on whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised. In making this assessment Contracting States enjoy a margin of appreciation which will vary according to the circumstances of the case (see, for example, Eur. Court HR, Lithgow and Others v. the United Kingdom judgment of 8 July 1986, Series A no. 102, pp. 66-67, para. 177).

The Commission does not accept that the applicant is in an analogous position to potential plaintiffs who have not issued their proceedings due to mental incapacity, their status as minors or to plaintiffs whose cause of action is fraud or whose cause of action has been concealed by the defendant. Such plaintiffs are in a more vulnerable position to that of the applicant in that such plaintiffs are either incapable in law (minors or of unsound mind) or could not have taken proceedings due to alleged fraudulent activity on the part of the defendant. Accordingly, the Commission also considers that the relative positions of the applicant and these categories of plaintiff are not comparable to the positions of the categories of plaintiff at issue in the above-cited Stubbings application. In the latter application the victims of negligently and intentionally inflicted personal injury (both of whom lacked the requisite knowledge required to bring an action) were found to be in analogous positions.

As to the applicant's position (as a victim of negligently inflicted financial loss) in comparison to victims of negligently inflicted personal injury and even assuming that the applicant finds himself in an analogous position, the Commission notes that the Irish State has consistently distinguished, through both the 1957 and 1991 Acts, the positions of individuals who have suffered personal and financial injury. The former are allowed a three year time-limit and, pursuant to the 1991 Act, a date of discoverability option whereas the latter are allowed a fixed period of six years. Accordingly and in light of the State's margin of appreciation in this area, the Commission considers that this difference in treatment pursues a legitimate aim and that the means employed are proportional.

The Commission therefore considers that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains under Article 1 of Protocol 1 (P1-1) that his property rights were unjustifiably interfered with as a result of the applicable fixed limitation period and under Article 14 of the Convention in conjunction with Article 1 of Protocol 1 (Art. 14+P1-1) due to the different time-limits applicable to persons with personal injury actions, those under a disability (including minors) and those suing for fraud or whose cause of action had been concealed.

The Commission recalls that, in circumstances where the matter at issue concerns private rights, there is no interference with the right to the peaceful enjoyment of possessions when, pursuant to pre-existing legislation, a judge orders one party to a contract to pay compensation to another party (No. 10000/82, Dec. 4.7.83, D.R. 33 p. 247).

In the present case, the Commission notes that the legislative interference alleged was with the applicant's negligence claim against his solicitor with a view to the applicant recouping compensation as regards the reduced value of the applicant's first residence. In view of the High Court's acknowledgment that the applicant would have had, but for the time bar, a cause of action against his solicitor and an entitlement to damages, the Commission would accept that the matter relates to the applicant's possessions. However, it is the Commission's opinion that the application by the domestic courts of a time-limit fixed by pre-existing legislation to proceedings concerning the private rights of the applicant does not constitute an interference with the his right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol 1 (P1-1) (mutatis mutandis, No. 10000/82. loc. cit.). As regards his complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol 1 (Art. 14+P1-1), the Commission does not consider, for the reasons outlined at 2. above, that this complaint gives rise to a violation of the Convention.

Accordingly, the Commission considers that these complaints are 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
Acting President
of the First Chamber