AS TO THE ADMISSIBILITY OF

Application No. 16680/90
by W.
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
J.A. FROWEIN
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 13 April 1990 by W. against the United Kingdom and registered on 7 June 1990 under file No. 16680/90;

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 citizen of the United States of America, born in 1939 and living in A., Maryland. He is an attorney.

He is represented before the Commission by William F. Dwyer, Attorney, Beverly Hills, California.

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

On 18 January 1985 the applicant became a director of Guinness P.L.C. in the United Kingdom.

In May 1986 £5.2 million was paid to Marketing and Acquisition Consultants Limited (M.A.C.), a company controlled by the applicant, for professional services rendered to Guinness P.L.C.

During late 1986 the press apparently reported that members of Guinness P.L.C.'s board of directors had been involved in fraudulent

activities. At the same time, criminal charges were brought against two directors of Guinness P.L.C. As a condition of bail they were forbidden to contact the applicant.

On 18 March 1987 the High Court ordered, ex parte, inter alia, that the applicant be prevented from removing his assets up to the value of £5.2 million out of the jurisdiction. Some time after the applicant was informed that if he came to London he would be arrested.

On 17 July 1987 the High Court, pursuant to Order 27 (3) of the Supreme Court Rules, gave summary judgment for Guinness P.L.C. against the applicant in the sum of £5.2 million. The High Court held, inter alia, that the applicant had impliedly admitted in his defence that he was in breach of his fiduciary and statutory duties to Guinness P.L.C. by not disclosing his interest in M.A.C. to their full board of directors. The applicant was represented at the hearing, and throughout these proceedings, by counsel. The applicant appealed on the grounds that, inter alia, the High Court had misdirected itself as to the law. On 10 May 1988 the Court of Appeal rejected the applicant's appeal.

On 8 February 1990 the House of Lords rejected the applicant's further appeal. The appeal was based on the grounds, inter alia, that the Court of Appeal had misdirected itself as to the law and that his case merited a full hearing of the evidence, rather than judgment on the admissions. The House of Lords also found that the applicant had no right to the £5.2 million without the authority of the full board of directors of Guinness P.L.C. Thus Guinness' claim against him for repayment was unanswerable and did not warrant a full trial on the merits.

COMPLAINTS

The applicant complains of a violation of Article 6 para. 1 of the Convention, in that allegedly he was not given a fair and public hearing by an independent and impartial tribunal established by law, since he was prevented from coming to London and contacting two ex-directors of Guinness P.L.C., such contacts being necessary for the preparation of his defence in the High Court action against him. He complains that the proceedings in the High Court, Court of Appeal and House of Lords were prejudiced by adverse press reports instigated by the United Kingdom Government. He also complains of the partiality of the judges and in particular that one of the judges of the House of Lords was the father of counsel for Guinness P.L.C.

THE LAW

The applicant complains that he is the victim of a violation of Article 6 para. 1 (Art. 6-1) of the Convention, which provides as follows:

> "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."

However, under Article 26 (Art. 26) of the Convention the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law. The mere fact that the applicant has submitted his case to the various competent courts does not of itself constitute compliance with this rule. It also requires that the substance of any complaint made before the Commission should have been raised during the proceedings concerned (cf. No. 5574/72, Dec. 21.3.75, D.R. 3, pp. 10, 15 ; No. 10307/83, Dec. 6.3.84, D.R. 37, p. 113 at p. 120). The Commission notes from the case-file that the applicant has apparently not raised in front of any United Kingdom court the complaints that

the hearings were prejudiced or unfair. In these circumstances, the Commission concludes that the applicant has failed to exhaust domestic remedies. The application must accordingly be rejected pursuant to Articles 26 and 27 para. 3 (Art. 26, 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)