AS TO THE ADMISSIBILITY OF

Application No. 32540/96
by Peggy Ella WOOD
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
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 21 January 1996 by Peggy Ella WOOD against the United Kingdom and registered on 6 August 1996 under file No. 32540/96;

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 British citizen, born in 1916, and resident in Portsmouth. She is represented before the Commission by Mr. A Simmons, a solicitor working for the Centre for Advice on Individual Rights in Europe ("the AIRE Centre") in London.

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

In 1973 the applicant consulted a solicitor Mrs. H of H & Co. in order to seek a loan upon the security of her house. Mrs. H arranged several loans for the applicant during 1973 and 1974. One of these loans was from another client of H & Co., another was a loan directly from H & Co.. The most significant loan was one of £7,000 from a company M Ltd., secured by a first mortgage over the applicant's property. M Ltd. was partly owned by the husband of Mrs. H, who was also the senior partner of H & Co. The applicant was not informed of Mrs. H's personal involvement with M Ltd.

The applicant was unable to keep up repayments on the loan and

in April 1975 H & Co. commenced proceedings on behalf of M Ltd., seeking possession of the applicant's house. The applicant, realising that her former solicitors were now proceeding against her, instructed a different firm of solicitors to act for her. These new solicitors, by means of a company search, revealed the interest of Mr. H in M Ltd. Despite requests from the applicant's new solicitors, H & Co. refused to end their participation in the litigation. In 1977 the proceedings regarding the loan from M Ltd. were compromised, with M Ltd. agreeing not to seek repossession until January 1979 or the sale of the property, whichever date was the earlier.

In February 1979 the applicant wrote to the Law Society, the regulatory body of solicitors in England and Wales, complaining about the conduct of Mrs. H and H & Co. The Law Society responded that H & Co. were acting for M Ltd. and owed no duty to the applicant. The applicant wrote back immediately to clarify that H & Co. had formerly been her solicitors, but received the same response.

In October 1979 H & Co. began fresh proceedings on behalf of M Ltd. seeking possession of the applicant's house. H & Co. also pursued actions against the applicant on behalf of one of their clients who had loaned the applicant money, and on behalf of themselves, in respect of the loan they had made to the applicant and with regard to their unpaid costs.

In 1981 the applicant brought proceedings against H & Co. and M Ltd., alleging conspiracy, breach of fiduciary duty and negligence, and seeking to have the charge in favour of M Ltd. over her house set aside. However, in July 1981 M Ltd. was granted possession of the applicant's house and an appeal against this order was dismissed in 1982.

In 1981 the applicant wrote to the Office of Fair Trading to complain about H & Co. The Office of Fair Trading in turn wrote to the Law Society. On this occasion the Law Society responded by informing H & Co. of the complaint. In early 1982 Mrs. H wrote to the Law Society stating that the applicant had been hard pressed to find the loan money and probably would not have objected to the conflict of interests had she known. In 1983 the applicant was informed by the Law Society that her complaint would not be adjudicated so long as there was ongoing litigation.

On 6 September 1983 the applicant was evicted from her home.

In early 1986 the applicant approached her Member of Parliament who wrote to the Law Society, and in August 1986 the applicant's solicitors wrote to the Law Society setting out the complaints against H & Co. The Law Society replied that the only remedy available to the applicant was in a civil action against H & Co..

In 1987 the applicant settled her civil action against H & Co. for £2,500 together with her costs.

On conclusion of these proceedings the Law Society commenced an investigation into the conduct of H & Co. The report was completed in 1989. As a result of the report a formal rebuke was issued to Mrs. H by the Law Society, but no further measures were taken.

On 4 April 1989 the applicant began legal proceedings against the Law Society for negligence for not investigating her complaint promptly. In the judgment of this case on 28 July 1993 Mr Justice Otton was very critical of the behaviour of the Law Society and their failure to competently investigate the applicant's complaint. However he nevertheless found for the Law Society stating that :

> "... [the applicant] never did have a realistic chance of saving her home through the intervention of the Law Society in either

1979 or in 1983. ... I am driven to the conclusion that the real reason why she was eventually evicted was because she could not raise the money to satisfy her creditors and the law took its inevitable course."

On 27 February 1995 the Court of Appeal dismissed an appeal made by the applicant against the judgment at first instance. The Court of Appeal assumed that the Law Society owed the applicant a duty of care, although the point was left open, and the appeal was rejected on grounds of a lack of causation and failure to establish damages sustained. The Court rejected the suggestion that if Mrs. H or H & Co. had been rebuked by the Law Society then M Ltd. would not have sought possession of the applicant's house. The Court further stated that the applicant had chosen to settle her negligence claim against H & Co. for an agreed sum plus costs.

On 21 July 1996 the applicant was refused leave to appeal against the judgment of the Court of Appeal by the Appeals Committee of the House of Lords.

COMPLAINTS

The applicant complains that the Law Society did not criticise the professional conduct of H & Co. until 1989, 10 years after the date of her first complaint. The applicant considers that the failure of the Law Society to rebuke H & Co., meant that she was unsuccessful in her legal proceedings to try and stop the repossession of her home. She invokes Article 8 and Article 1 of Protocol No. 1 of the Convention.

The applicant further complains that she did not receive a fair hearing in her case against the Law Society and that the judgment in this case amounted to giving the Law Society immunity from all negligence claims, in breach of Article 6 para. 1 of the Convention.

She also alleges that the behaviour of the Law Society was such that she had no effective remedy against H & Co., in breach of Article 13 of the Convention.

THE LAW

1. The applicant complains under Article 8 and Article 1 of Protocol No. 1 (Art. 8, P1-1) of the Convention, about the events that led to the repossession of her house, and the failure of the Law Society to promptly rebuke H & Co.

Article 8 (Art. 8) of the Convention provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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."

Article 1 of Protocol No. 1 (P1-1), provides so far as relevant, as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law..."

The Commission notes that the applicant's house was repossessed

when she was unable to meet the repayments on a loan which was secured by a mortgage over the house.

In so far as the applicant complains that had the Law Society rebuked H & Co., then the loan may not have been enforced by repossession of the house, the Commission notes that this argument was rejected by both the High Court at first instance and the Court of Appeal. Both these courts considered that the house would have been repossessed in any event, due to failure to repay the loan, regardless of any action by the Law Society. The Commission considers that even in so far as it may be assumed that the Law Society had any obligation to intervene to discipline H & Co., the applicant has failed to show that any failure on their part was causative of the repossession of her house.

In so far as the repossession constituted an interference with the applicant's home, the Commission finds that this was in accordance with the terms of the loan and the domestic law and was necessary for the protection of the rights and freedoms of others, namely the lender. To the extent that the applicant is deprived of her possessions by the repossession, the Commission considers that this deprivation is in the public interest, that is the public interest in ensuring payment of contractual debts, and is also in accordance with the rules provided for by law. It follows that this part of the application must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains that she did not receive a fair hearing in her case against the Law Society. She further complains that the judgment in this case amounted to giving the Law Society immunity from all negligence claims. The applicant invokes Article 6 para. 1 (Art. 6-1) of the Convention.

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 ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law..."

In so far as the applicant complains against the judgment in her case against the Law Society, the Commission recalls that in accordance with Article 19 (Art. 19) of the Convention, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see Application No. 19890/92, Dec. 3.5.93, D.R. 74, p. 234). With regard to the applicant's specific complaint that she was unable to sue the Law Society in negligence, the Commission notes that the Court of Appeal did not find that the Law Society owed no duty of care to the applicant. Rather the point was left open, the Court of Appeal working on the assumption there was such a duty and rejecting the applicant's claim on grounds of causation and damage. The Commission further notes that the applicant in any event had a remedy in respect of the circumstances of the loan, by means of her negligence claim against H & Co. themselves.

The Commission finds no evidence in the facts as submitted by the applicant, that there has been any arbitrariness or unfairness, on the contrary her case was given a full and detailed consideration by the High Court and the Court of Appeal.

It follows that this complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains under Article 13 (Art. 13) of the

Convention that she had no effective remedy as against the Law Society.

Article 13 (Art. 13) of the Convention provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls that the guarantees of Article 13 (Art. 13) apply only to a grievance which can be regarded as "arguable" (cf. Eur. Court HR, Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 14, para. 31). In the present case, the Commission has rejected the substantive claims as disclosing no appearance of a violation of the Convention. For similar reasons, they cannot be regarded as "arguable".

It follows that this complaint must be dismissed as 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	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber