AS TO THE ADMISSIBILITY OF

Application No. 24001/94
by Peter Vaughan GILL and
Mary Therese MALONE
against the Netherlands and the United Kingdom

The European Commission of Human Rights (Second Chamber) sitting in private on 11 April 1996, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. ŠVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, 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 23 March 1994 by Peter Vaughan GILL and Mary Therese MALONE against the Netherlands and the United Kingdom and registered on 28 April 1994 under file No. 24001/94;

Having regard to :

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

- the observations submitted by the respective respondent Governments on 3 and 24 January 1995 and the observations in reply submitted by the applicants on, inter alia, 27 February 1995;

Having deliberated;

Decides as follows:

THE FACTS

The first applicant is a United Kingdom national, born in 1956. The second applicant is an Irish national, born in 1960. They are an unmarried couple and currently reside in the Netherlands.

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

a. Particular circumstances of the present case

Until January 1988 the applicants resided in Spain, where they worked as musicians. In January 1988 they decided to travel to the United Kingdom, as the second applicant was expecting a baby of the first applicant and they wished the child to be born in the United Kingdom.

They decided to travel to the United Kingdom via the Netherlands. Since the second applicant did not feel well, she consulted an obstetrician in the Netherlands, who advised her not to continue her journey.

On 31 January 1988 the applicants' daughter, Shelley, was born in Amsterdam. On 3 February 1988 the first applicant went to the Municipal Population Register (Gemeentelijke Dienst voor het Bevolkingsregister, hereinafter referred to as "the Register") of Amsterdam in order to declare Shelley's birth. He recognised the paternity and requested to be registered as Shelley's father and that Shelley be registered under his family name "Gill" in the Register of Births.

He was informed, however, that, pursuant to British law as it appeared from directives available to the Register, Shelley could not be registered under his name and that he could not be registered as her father. She was consequently registered as the second applicant's daughter under the latter's family name "Malone". The first applicant, considering the registration to be incomplete, subsequently refused to sign Shelley's birth act (geboorteakte).

The applicants decided to stay in the Netherlands as they considered that they should not leave before the matter was resolved and sought advice. It appears that they presented themselves to the Aliens Police (Vreemdelingenpolitie) and, on 22 February 1988, obtained permission to remain in the Netherlands until 29 March 1988. As a request for welfare benefits was rejected and they could not find any work, they sold their motor home and bought a boat.

When seeking advice from the British Consulate at Amsterdam the applicants were informed that there were no objections to the registration of the first applicant as Shelley's father, but that the Consulate could not intervene in the matter.

By letter of 17 March 1988 the applicants' lawyer requested the Registrar of Births, Deaths and Marriages (Ambtenaar van de Burgerlijke Stand, hereinafter referred to as "the Registrar) to register the first applicant as Shelley's father in her birth act.

In his reply of 5 April 1988 the Registrar informed the applicants' lawyer that, according to Dutch international private law, the parentage (afstamming) and legal ties between parents and children are generally governed by the national law of the parents. The possibility for recognition of paternity (erkenning) depends on the national law of the father. As, unlike Dutch law, British law does not provide for the legal notion of recognition entailing consequences in family law, the Register refused to admit the first applicant's request for recognition.

When the British Consulate did not object to the first applicant's recognition, this was, according to the Registrar, due to the fact that British law refers back to Dutch law, whereas such referral (renvoi), in general, is not accepted in the Netherlands. In order to resolve this impasse, there were several decisions by, inter alia, the Regional Court (Arrondissementsrechtbank) of Amsterdam in which an unmarried man from an anglo-saxon legal order has been permitted to recognise a child, albeit under specific conditions, i.e.

a) that the joint place of residence of mother and child and the recognising father is in the Netherlands;

b) that mother and child are Dutch nationals;

c) that the father's permanent place of residence is in the Netherlands.

The Registrar stated that a period of three years is being used in this connection.

However, according to the Registrar, this case-law did not apply in the present case, as both mother and child hold Irish nationality. It would however be possible, by way of a re-registration (her-registratie) of the birth act at either the British or the Irish Consulate, to add an annotation to the Dutch birth act from which it would appear that the child bears the family name "Gill", although this would not create any legally recognised family ties (familierechtelijke betrekkingen).

The Registrar added that, if the applicants would marry abroad and submit an authentic marriage certificate, it would be possible to make an annotation (kantmelding) to the birth act stating that Shelley is the applicants' legitimate child since, according to Sections 2 and 3 of the United Kingdom Legitimacy Act 1976, legitimation is possible as from the time when the biological father marries the mother. The Registrar finally stated that, if the applicants would marry in Amsterdam, which could be done if at least one of them is registered in the Amsterdam Population Register (Bevolkingsregister), recognition could, on the basis of formal notification Nr. 10 of the Permanent Advisory Commission for the Civil Register (officiële mededeling nr. 10 van de Permanente Commissie van Advies voor de Burgerlijke Stand), be possible after their marriage in order also to allow for legitimation under Dutch law.

According to the applicants, they did not receive a copy of the birth act for Shelley despite several requests. On 25 April 1988 they were, however, provided with an extract of the Amsterdam Register of Inhabitants (Uittreksel uit het Persoonsregister) stating the child's name as Shelley Malone, and indicating her date and place of birth. The extract further states that Shelley is unmarried, that she has Irish

nationality and that on 7 March 1988 she left Amsterdam for an unknown destination. The extract does not contain any information about her parentage.

By letter of 7 June 1988 the applicants' representative requested the Register, specifying that the first applicant had not asked for recognition of paternity, to register the first applicant as Shelley's natural father and to register her under his family name. According to the applicants' representative British law does not prevent registration of the first applicant as Shelley's natural father or her registration under the first applicant's family name.

By letter of 2 August 1988 the Register replied to the applicants' representative that the request of 7 June 1988 could not be granted, since under Dutch law only data referred to in the Dutch Civil Code (Burgerlijk Wetboek) and the Decree on the Register of Births, Deaths and Marriages (Besluit Burgerlijke Stand) can be included in Dutch acts. The applicants were informed that, if they disagreed with this decision, they could initiate proceedings pursuant to Section 29 of the Civil Code Book 1.

It appears that in the meantime, namely on 11 July 1988, the applicants and their daughter were arrested and their boat was searched by the police. The applicants were informed that they would be deported to the United Kingdom. They were, however, released on the same day after having been told to return one day later in order to collect their passports. The next day they were informed by the Aliens Police that they should leave the Netherlands. The applicants promised to leave the Netherlands voluntarily by boat. Their passports had apparently already been sent to the Roosendaal customs office.

On 13 July 1988, while travelling in their boat to Roosendaal, the applicants were rescued by the Rotterdam police, as the boat was making water. The Rotterdam police collected their passports at Roosendaal, which had already been stamped "expelled on 11 July 1988, deported because of illegality".

The applicants subsequently returned to Spain, where they apparently encountered several problems in connection with Shelley's unresolved status, such as, inter alia, the initial refusal by the Irish Embassy to include Shelley in her mother's passport, since the extract of the Amsterdam Register of Inhabitants did not mention that the second applicant was her mother, and the refusal to provide Shelley with a separate Irish passport, since this requires the consent of the father, who was not mentioned in any of the official documents concerning Shelley.

Between July 1988 and 1993 the applicants returned several times to the Netherlands in order to resolve the problems.

On 7 July 1989, after Shelley had been refused entry back to Spain for lack of identity papers, she was provided with a Certificate of Identity by the United Kingdom Passport Office at Gibraltar. In this certificate she bears her mother's family name. The certificate further states that she resides at Marina Bay and that her national status has not been determined.

In two separate declarations in Spanish, both certified on 24 January 1990 by a notary public at Fuengirola, Spain, the applicants declared that they were Shelley's parents and that she bears the first applicant's family name.

In a Dutch extract from Shelley's birth registration issued by the Amsterdam Register on 12 July 1989 only her mother is mentioned and the space for her father's name has been barred. It appears that on the basis of this extract the Irish Embassy at Madrid, in April 1990, agreed to include Shelley in her mother's passport under the first applicant's family name "Gill", thereby acknowledging Shelley's Irish nationality.

In an internal note dated 4 October 1993, addressed to the Registrar, his attention was drawn to recent changes in Irish law, introducing the legal notion of recognition entailing legal recognition of family ties (erkenning met familierechtelijke betrekkingen). In view of, inter alia, tendencies in the case-law of the Convention organs and Dutch international private law, it was proposed to let the Irish law of the mother prevail over the British law of the father and to allow the first applicant to recognise Shelley.

In a declaration of 6 October 1993 the British Vice-Consul at Amsterdam stated that there were no objections to the name of the first applicant being added to the local birth certificate of Shelley, but added that she had no claim to British nationality, since this would only be possible by legitimation.

On 7 October 1993 the Civil Register official accepted the first applicant's recognition of his paternity in respect of Shelley. An annotation (kantmelding) dated 11 October 1993 was made to Shelley's birth registration stating that she has been recognised by the first applicant on 7 October 1993 and that her family name is "Gill".

In a Dutch extract from Shelley's birth registration issued by the Amsterdam Civil Registry Office on 7 October 1993 Shelley bears the first applicant's family name, the first applicant is mentioned as her father and the second applicant as her mother.

In a declaration of 2 November 1993 the British Vice-Consul at Amsterdam stated that, although Shelley had been recognised (erkenning) under Dutch law, this change does not confer legitimation under British law. Under the British Nationality Act 1981 the relationship between a father and a child only exists between a father and a legitimate child born to him. The Vice-Consul concluded that Shelley had no claim to British nationality through her father.

By letter of 8 November 1993 a social worker at the Amsterdam Municipal Social Service, on behalf of the applicants, requested the Queen to intervene in the applicants' attempts to obtain financial aid on moral and humanitarian grounds. In this letter it was explained that, although Shelley had now been recognised and had her father's name, due to the fact that in their attempts to resolve the problems surrounding Shelley's birth registration the applicants had never been properly advised by the organs and official institutions involved, all their financial resources had been spent, that they were homeless, received no medical care or schooling for their daughter who was nearly six years old, had insufficient means to pay for food and clothing and that, for lack of means, they could not return to Spain or the United

Kingdom. The Cabinet of the Queen forwarded this letter to the Deputy Minister of Social Affairs and Employment.

By letter of 10 January 1994 the first applicant contacted the United Kingdom Embassy in respect of Shelley's nationality status. His letter was forwarded to the British Consulate at Amsterdam.

By letter of 27 January 1994 the Embassy of Ireland at The Hague informed the second applicant that any child born of an Irish citizen is entitled to Irish citizenship and that no particular form of registration exists with regard to children born outside Ireland. In order to issue an Irish passport, or to enter a child's name in a passport, documentary evidence is required of the entitlement of the child to Irish citizenship, usually in the form of a birth certificate, showing that at least one of the parents is Irish. The Embassy stated that the registration of Shelley is the responsibility of the Dutch authorities and that only they can change the registration of her birth. The Embassy, noting that the Irish Embassy at Madrid had agreed to insert Shelley in the second applicant's passport under the first applicant's family name, found that the question of Shelley's entitlement to Irish nationality was resolved. The Embassy further stated that any other issues, like the use of the father's name by the child, have no bearing on the issue of citizenship and Shelley's entitlement to a passport. However, if the second applicant wished to apply for a separate passport for Shelley, it was required that both parents should agree to this.

By letter of 14 January 1994 the applicants' representative filed five complaints with the Municipal Ombudsman of Amsterdam.

On 21 January 1994 the British Vice-Consul at Amsterdam replied to the first applicant's letter of 10 January 1994 that the only way by which Shelley could acquire British nationality would be through legitimation by marriage, and that recognition under Dutch law is not equivalent to legitimation. The Vice-Consul stated that, for the purposes of the British Nationality Act 1981 the relationship between a father and a child shall be taken to exist only between a man and any legitimate child born to him. The Vice-Consul added that Section 47(1) of the British Nationality Act 1981 provides for a person, born out of wedlock and legitimated by the subsequent marriage of his parents, to be treated as if he had been born legitimate. He concluded that it is obvious that the only way by which Shelley could obtain British nationality is through legitimation.

By letter of 10 March 1994 the British Vice-Consul at Amsterdam informed the first applicant, following the latter's letter of 7 February 1994 to the Home Office, that nationality is a matter of law enacted by Parliament and that neither Ministers nor officials have the authority to vary provisions in individual cases. He concluded that in his opinion the correspondence in the matter had reached its conclusion.

On 3 May 1994 the Municipal Ombudsman rejected the applicants' complaints about the refusal to grant the first applicant's request for recognition and registration as Shelley's father, and about the delay in issuing a birth certificate. The complaint about the applicants' treatment by the Aliens Police was rejected for lack of competence, since the Municipality is not responsible for the Aliens Police, this being a national organ. Only the applicants' complaint about the Population Register's

attitude in respect of the first applicant's request for recognition and the pertaining change of Shelley's family name was to be examined by the Ombudsman. The Ombudsman, however, specified that a possible finding would not entail an order to the Municipality to pay any damages, as requested by the applicants. He referred them in this respect to the civil judge.

On 16 June 1994 the Deputy Minister of Justice informed the applicants' representative that he had ordered the police at Amsterdam to provide the applicants with the opportunity of filing a request for a residence permit, which would subsequently be examined in the normal manner. On the same date the Deputy Minister informed the applicants that, if they considered themselves eligible for a residence permit, they should apply for one at the Aliens Department (Vreemdelingen-dienst) in their place of residence.

By letter of 28 June 1994 the Aliens Police of Amsterdam invited the applicants to present themselves on 30 September 1994 at its office in connection with a request for a residence permit.

By letter of 4 July 1994 the Amsterdam Population Register informed the applicants that it is the task of the Register of Births, Deaths and Marriages to verify whether the national law of the person wishing to recognise a child provides for recognition within the meaning of Dutch law. Since this notion is unknown in British law, the first applicant's request for recognition could not be granted. It was added that it was the task of that Register to examine whether there were sufficient links with Dutch law. Finally, the applicant was informed that, with the assistance of a lawyer, he could have requested the Regional Court (Arrondissementsrechtbank) to order the Register under Section 29 of the Civil Code Book 1 to supplement the birth register by adding an act of recognition (erkenningsakte).

On 3 May 1995 the applicants filed a petition with the Regional Court of Amsterdam on the basis of Section 29 of the Civil Code Book 1, requesting the court to order the Registrar to grant the first applicant's initial request of February 1988 to recognise Shelley, or to order the official to allow the registration of Shelley according to British law while mentioning the names of both her father and mother on the birth certificate dated on Shelley's date of birth.

Following a hearing held on 22 August 1995, the Regional Court rejected the applicants' request on 19 September 1995. After having declared itself competent to determine the issue, it held that, according to the rules of Dutch international private law, the question whether the first applicant may recognise paternity is to be answered on the basis of his national law, i.e. British law. This situation is only different when, as in the present case, that national law does not allow for recognition. In such a situation a man can recognise a child, provided there are sufficient links with the Netherlands legal order. At the time of Shelley's birth such links did not exist. According to the Regional Court that sole finding is a sufficient reason for not allowing the first applicant's recognition with retroactive effect and the Registrar's original decision was therefore correct. The Regional Court rejected the applicants' argument that, as a result of the Registrar's decision, Shelley was excluded from her father's nationality, because according to Dutch international private law this question must also be examined on the basis of the national law of the first applicant.

The Regional Court further noted that the applicant had subsequently been allowed to recognise his paternity. The Regional Court also held that the fact that the Registrar obliged the applicants to register Shelley's birth does not mean that the Registrar, when refusing to accept the first applicant's recognition, should subsequently have registered the first applicant according the rules of British law.

Finally, noting that in an extract of Shelley's birth registration dated 23 August 1995, the first applicant was mentioned as her father, the Regional Court found that the applicants no longer had any interest in their petition.

Insofar as the applicants had raised complaints under Article 8 and Article 10 of the Convention, the Regional Court noted that Shelley had been recognised in the meantime, holds Irish nationality and an Irish passport, and bears the family name "Gill". It found that the fact that Shelley could not obtain British nationality did not constitute an interference with the family life of Shelley and her parents within the meaning of Article 8 of the Convention.

It does not appear that the applicants filed an appeal against the decision of 19 September 1995.

In the meantime, the social services of Amsterdam have provided the applicants with housing and social security benefits.

b. Relevant domestic law and practice

i. The Netherlands

Title 4 of the Civil Code Book I (Sections 16-29d) contains the rules governing the functioning of the public Registries of Births, Deaths and Marriages (Registers van de Burgerlijke Stand). Registrars of Births, Deaths and Marriages are appointed by the municipal authorities in each municipality. Registrars, who note acts on births, marriages, divorces and deaths in the relevant Registers, have an independent responsibility of their own for the correctness of the data they register. According to the formal notification No. 10 of the Permanent Advisory Commission for the Civil Register, the Registrar should not, in principle, register any legal act or decision to which Dutch law, including Dutch international private law, does not attach any legal consequences.

Under Section 17 of the Civil Code Book I, a birth act is drafted by the Registrar of the municipality where the child is born. This act shall contain, inter alia, information about the place, the date and, if possible, the precise time of the birth, and the full name and place of residence of the mother. If the mother at the time of the birth is married or, although being unmarried at that time, was married 306 days before the day of the child's birth, the act shall mention the full name and place of residence of the mother's husband or former husband. Apart from these situations the father's particulars will only be
included in the act if he has recognised the child prior to the child's birth or if he recognises the child when declaring the child's birth.

Pursuant to Section 18 of the Civil Code Book I the persons who are competent to declare a birth are the father who has a relationship by law with the child (vader die tot het kind in familierechtelijke betrekking staat), the mother, any person who has witnessed the birth, the person in whose home the birth took place or the responsible member of staff of a hospital, prison of similar institution. In the absence of any other person, the Mayor (Burgemeester) is competent to declare a birth. Births must be declared within three days. After the third day a declaration of birth can only be made with authorisation of the Public Prosecutions Department (Openbaar Ministerie).

According to Section 23 in conjunction with Section 21 of the Civil Code Book I, subsequent changes in a person's situation, such as for instance recognition of paternity, are included by the Registrar in the relevant Register by way of an annotation (kanttekening) to the original act.

Section 5 para. 2 of the Civil Code Book I provides that the family name of an illegitimate child is the family name of its father if the latter has recognised the child. If this is not the case, it will bear the family name of its mother. A family name can also be changed by the Queen upon the request of the person concerned or of the latter's legal representative.

An illegitimate child has the status of a natural child of its mother. By recognition it can obtain the status of a natural child of its father, the latter being the person who has recognised the child (Section 221 Civil Code Book I), since recognition of a child does not require a biological relationship between the child and the recognising person. It is required that the recognising person is unmarried, although the Supreme Court has allowed an exception to this rule (Hoge Raad, 10 November 1989, Nederlandse Jurisprudentie 1990, nr. 450). An illegitimate child and its descendants are related by family law (staan in familierechtelijke betrekkingen) to the mother of the child and her relatives and, after recognition, also to the father and his relatives (Section 222 Civil Code Book I). Recognition can take place in the birth act of the child, by an act of recognition act drafted by a Registrar of Births, Deaths and Marriages or by a notarial act.

Recognition of a child does not entail legitimation. An illegitimate child can be legitimated through marriage when the mother's husband recognises the child either before or during the marriage (Section 214 Civil Code Book I).

According to Section 6 of the Act containing General Provisions on the Legislation of the Kingdom (Wet Algemene Bepalingen) the civil status of Dutch citizens is governed by Dutch law also when they reside abroad. According to the rules of Dutch international private law this principle applies by analogy to citizens of foreign countries.

In the directives applied by the Register of Births, Deaths and Marriages at the relevant time, it is stated, inter alia:

(Translation)

"7. Whether an alien may recognise (erkennen) depends on the legislation of the country of which he is a national. Whether the child has Dutch nationality is here not relevant, as according to Dutch international private law the parentage

(afstamming) and legal position (rechtspositie) of children are governed in general by the national law of their parents. ...

7.1 ... If both the mother and the recognising person (erkenner) hold a foreign nationality, it has to be verified whether the recognition according to Dutch international private law is in conformity with both legal systems. It must therefore be examined whether the Dutch form of recognition can be accepted by both legal systems and regard must be had to the legal rules on parentage of the foreign legal systems. If the recognition is in conflict with Dutch international private law or in case of doubt the persons concerned shall be referred to their own authorities. It could be possible that recognition can be accepted by these authorities.

7.2 (non-exhaustive list of countries whose legal systems do not provide for recognition)

Great Britain*

* Under certain conditions a British national can recognise see §7.3

7.3 ... British law often refers to the law of the place of residence. This implies that, when a British national resides abroad, under certain circumstances the law of that country can be applied to him/her.

A British national residing in the Netherlands can recognise paternity under the following conditions;

- mother, child and recognising person must have common place of residence in the Netherlands,
- mother and child must have Dutch nationality,
- the recognising person must have resided in the Netherlands for three years and must be unmarried, or married to the mother.

If these conditions have been met a British national can also be admitted to recognition of an unborn foetus."

The conditions under which a foreign national can be allowed to recognise a child under Dutch law by having the Dutch legal system prevail over the law of the foreign national have been determined by, inter alia, the Regional Court of Amsterdam in its decisions of 24 April 1981 (no. 80.4230), 27 January 1983 (no. 82.1740), 11 February 1983 (no. 82.2582) and 6 July 1983 (no. 82.0562).

Under Section 29 Book 1 of the Netherlands Civil Code the Regional Court (Arrondissementsrechtbank) can, upon the request of an interested party (belanghebbende) or the Public Prosecutions Department, order the Registrar to add a missing act, delete an act which erroneously has been included in a Register, or correct a registered act which is incomplete or which contains an error.

Pursuant to Sections 93 and 94 of the Constitution (Grondwet), the European Convention on Human Rights forms part of domestic law and prevails over domestic law in case the application of domestic law is incompatible with the provisions of the Convention.

ii. The United Kingdom

The system of civil registration of births, deaths and marriages was established by statute in England and Wales in 1837. Registration of births is at present governed

by the Births and Deaths Registration Act 1953, which requires that the birth of every child be registered by the Registrar of Births and Deaths for the area in which the child is born. The particulars to be entered are laid down in regulations under the 1953 Act.

In the case of a child whose father and mother were not married to each other at the time of its birth, the Registrar must not enter in the register the name of any person as father of the child, except, inter alia, at the joint request of the mother and the person stating himself to be the father of the child (he must then sign the register together with the mother), at the request of either parent on production of a copy of a parental responsibility agreement made between them in relation to the child, or at the request of either parent on production of a certified copy of an order giving the putative father parental responsibility for the child.

The High Court or a county court has a statutory power to make, following a request to this end, a declaration on parentage or legitimacy of a child.

Since 1969, the Registrar will ask the person registering the birth for the family name by which it is intended that the child will be known and this name will be recorded in the birth register. It is in fact possible for a child to be given a family name that is not the family name of either parent if that is the name which they wish the child to have.

A person is entitled to adopt such first name or surname as he or she wishes and to use these names without any restrictions or formalities, except in connection with some professions, where the use of the new names may be subject to certain formalities. For the purposes of record and to obviate the doubt and confusion which a change of name is likely to involve, the person concerned may make a declaration in the form of a "deed poll" which may be enrolled with the Central Office of the Supreme Court.

The new names are valid for the purposes of legal identification and may be used in documents such as social security papers and passports. The new names are also entered on the electoral roll.

The legal notion of recognition of paternity establishing a legal relationship between a paternity recognising man and a child born out of wedlock is not, as such, included in the British law. Such a legal relationship may be established through legitimation by a subsequent marriage (Legitimacy Act 1926). A child born out of wedlock, which is legitimated by a subsequent marriage, may have its birth re-registered.

The creation of a family law relationship is, however, not dependent upon a child's legitimation. If a child's father and mother were not married to each other at the time of the child's birth, it is further possible to establish a legal relationship between a father and his natural child by an application by the father for guardianship or parental authority over this child. Pursuant to the Children Act of 1989, it is also possible that the father concludes a parental responsibility agreement with the mother. In this way natural parents can assume parental responsibility without intervention by a judge.

The Family Law Reform Act 1987 was the last in a series of statutes removing the legal disadvantages of illegitimacy insofar as the child is concerned. It did, however, not remove distinctions between legitimate and illegitimate children in relation to entitlement to British nationality.

According to the British Nationality Act 1981, which entered into force on 1 January 1983 and which is generally definitive in terms of persons born on or after that date, there are separate categories of citizenship. These are, inter alia, British citizenship (citizens of the United Kingdom and Colonies who on 31 December 1982 had the right of abode in the United Kingdom), British Dependent Territories citizens, British Overseas citizenship, British subjects and British protected persons.

British citizenship is based on a combination of ius sanguinis and ius soli. A child born in the United Kingdom will be a British citizen if one of his or her parents is a British citizen or is settled in the United Kingdom. British citizenship may generally be acquired from either parent. If the child is illegitimate it may be acquired only from the mother. Dual and multiple nationality is generally permitted, although certain categories of citizens may lose that status if another nationality or citizenship is acquired. The status of British protected person is on certain conditions acquired if the child would otherwise be stateless.

British nationality may be acquired:

- by birth in the United Kingdom to a parent who is a British citizen or is settled in the United Kingdom;
- by descent from either parent if the child is legitimate and from the mother only if the child is illegitimate; a child born out of wedlock may be legitimated by the subsequent marriage of his or her parents;
- by naturalisation; under certain specific conditions British citizenship may be acquired by application for a certificate of naturalisation, although the Secretary of State has full discretion to order or refuse to issue a certificate of naturalisation regardless of the question whether all conditions have been fulfilled;
- by registration; in some cases a petitioner may have an entitlement to be registered as a British citizen and does not need to go through the naturalisation procedure; this entitlement is possessed by, inter alia, certain minors born in the United Kingdom who do not acquire British citizenship at birth, those born outside the United Kingdom to parents who are British citizens by descent only, and certain persons who would otherwise be stateless.

The Secretary of State may register any minor as a British citizen if, in the circumstances of a particular case, he considers it appropriate to do so.

iii. Ireland

Nationality matters are governed by the Irish Nationality and Citizenship Act of 1956 as amended in 1986. According to Section 6 para. 2 of this Act, every person whose father or mother was an Irish citizen at the time of his of her birth is an Irish citizen.

The Status of Children Act 1987, which entered into force on 7 June 1988, contains a number of fundamental changes in the rules on affiliation. According to Section 3 of this Act, there shall be uniform rules for establishing affiliation under family law between parents and children, irrespective of the question whether or not the parents are or have been married to each other.

If a child is born out of wedlock, it is possible when both parents so request to include the natural father as the child's father in the birth act when the birth is declared (Section 49 of the 1987 Act). The father must then co-sign the birth act. A similar procedure is followed if, when this has not been done at the time of the declaration of the birth, the registration of the child's father takes place at a later point in time.

As a result of such a registration the parents can request the judge to grant them joint parental authority (Section 12 of the 1987 Act). Both parents are subject to maintenance obligations (Section 16 of the 1987 Act) and paternity has consequences in the field of succession (Section 29 of the 1987 Act).

Prior to the entry into force of the Status of Children Act 1987, the legal notion of recognition of paternity was not, as such, included in Irish law.

COMPLAINTS

The applicants complain that the refusal to recognise the first applicant's paternity and the consequences thereof unjustly interfered with their right to respect for their family and private life within the meaning of Article 8 of the Convention.

The applicants further complain under Article 14 of the Convention in conjunction with Article 8 of the Convention that the refusal to recognise the first applicant's paternity constituted discriminatory treatment on the basis of marital status and national origin.

The applicants finally complain under Article 13 of the Convention that they had no effective remedy against the alleged violations of their rights under the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 March 1994 and registered on 28 April 1994.

On 12 October 1994 the Commission decided to communicate the application to both the Netherlands Government and the United Kingdom Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The written observations of the Netherlands Government were submitted on 3 January 1995. The written observations of the United Kingdom Government were submitted on 24 January 1995, after an extension of the time-limit fixed for that purpose. The applicants made submissions in reply by letters of 27 February and 3

April 1995. The applicant made additional submissions to the Commission by letters of 26 May, 1 and 21 June, 26 September and 4 October 1995 respectively, also after an extension of the time-limit.

On 28 February 1995 the Commission granted the applicants legal aid. Following the applicants' request for assistance in finding suitable legal representation in the proceedings before the Commission, the Commission sought the assistance of both the Netherlands National Bar Association and the Amsterdam Bar Association. The latter provided the applicants with the names of a number of possible lawyers. However, since, according to the applicants, none of the lawyers suggested was willing to represent them, the applicants informed the Commission, by letter of 21 June 1995, that they no longer wished to be represented by a lawyer in the proceedings before the Commission.

THE LAW

The applicants complain of violations of their rights under Articles 8, 13 and 14 of the Convention for which they hold the Governments of the Netherlands and the United Kingdom responsible.

1. The first question which arises is whether the facts complained of by the applicants are imputable to the United Kingdom.

According to Article 1 of the Convention, "(t)he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention".

The Commission recalls that the acts of State officials, including diplomatic or consular agents, bring persons under the jurisdiction of that State to the extent that they exercise their authority in respect of these persons (cf. No. 17392/90, Dec. 14.10.92, D.R. 73 p. 193).

The United Kingdom Government submit that their responsibility is not engaged in relation to this application. They consider that, regardless of whether or not Dutch officials applied United Kingdom law correctly, it is the provisions of the law of the Netherlands which are being challenged by the applicants.

The Commission notes that in the present case, the British Vice-Consul in Amsterdam only acted in connection with the applicants' claim for Shelley's status as a British national on the basis of descent. He did not apply British family law, but merely informed the applicants of the state of this law and the rules on British citizenship.

The Commission recalls that the Convention does not guarantee, as such, a right to acquire a particular nationality (cf. No. 11278/84, Dec. 1.7.85, D.R. 43 p. 216). The refusal to acknowledge Shelley's status as a British national did not, therefore, concern any of the rights and freedoms referred to in Article 1 of the Convention and consequently did not engage the responsibility of the United

Kingdom under the Convention. This part of the application must, therefore, be rejected for being incompatible ratione materiae with the Convention.

Insofar as the applicants complain of the application of British family law in the present case, the Commission notes that the Dutch authorities, pursuant to the rules of Dutch international private law, applied British family law in respect of the determination of the first applicant's legal family ties with his natural daughter.

The complaint against the United Kingdom could be understood as a complaint of the contents of British family law insofar as it applied to the applicants' family conditions. In this respect it is important to note, however, that it was the Dutch authorities that took the relevant decisions regarding the recognition of the first applicant's paternity and it was their responsibility, irrespective of the contents of British law, to see to it that the obligations under the Convention were respected. The responsibility of the United Kingdom under the Convention is therefore not directly engaged in this respect.

It follows that insofar as the application is directed against the United Kingdom it is partly incompatible ratione materiae and partly incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 of the Convention.

2. The applicants complain that the refusal to recognise the first applicant's paternity and the consequences thereof unjustly interfered with their right to respect for their family and private life within the meaning of Article 8 of the Convention and constituted discriminatory treatment contrary to Article 14 of the Convention.

Article 8 para. 1 of the Convention reads:

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

Article 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 Netherlands Government submit that the applicants can no longer claim to be a victim within the meaning of Article 25 of the Convention, as their problems have been resolved on 7 October 1993, when the first applicant was allowed to recognise his daughter. The Government further submit that the applicants have not exhausted domestic remedies within the meaning of Article 26 of the Convention.

The applicants consider they may still be regarded as victims within the meaning of Article 25 of the Convention. As regards the argument that the domestic remedies have not been exhausted, the applicants submit, inter alia, that the remedy under Section 29 of the Civil Code Book 1 was first offered six months after the alleged violation and three weeks after their expulsion from the Netherlands.

The Commission does not find that the fact that the applicants' problems have been resolved on 7 October 1993 automatically implies that they can no longer claim to be victims in respect of events in connection with the present complaints which occurred prior to that date. The solution to the applicants' problems was a result of a different legal approach taken by the Dutch authorities and no redress was offered as regards their problems encountered prior to 7 October 1993. The Commission is, therefore, of the opinion that the applicants can still claim to be victims within the meaning of Article 25 of the Convention.

As regards the substance of the present complaints, the Commission recalls that the essential object of Article 8 of the Convention is to protect the individual against arbitrary action by public authorities. There may in addition be positive obligations inherent in effective "respect" for family life. In respect of both the negative and positive obligations regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation. Where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible as from the moment of birth or as soon as practicable thereafter the child's integration in its family (cf. Eur. Court H.R., Kroon and others judgment of 27 October 1994, Series A no. 297-C, p. 56, paras. 31-32).

The Commission notes that at the relevant time, the Registrar refused to accept the first applicant's recognition of his daughter and thus, at least temporarily, barred the establishment of legal ties between them, which caused the applicants various problems until 7 October 1993 when the first applicant was enabled to lawfully recognise his daughter.

The Commission further notes that, already in March 1988, the applicants sought legal advice and were subsequently assisted by a lawyer in their contacts with the Dutch Registrar. The Commission finally notes that, already at that time, the applicants could have instituted proceedings pursuant to Section 29 Book 1 of the Netherlands Civil Code in conjunction with Sections 93 and 94 of the Constitution arguing that the refusal to admit the first applicant's recognition was contrary to Article 8 of the Convention, both alone and in conjunction with Article 14 of the Convention. It was however not until May 1995 that the applicants instituted proceedings under Section 29 of the Civil Code Book 1.

The Commission recalls that Article 26 of the Convention requires applicants to make a "normal use" of remedies "likely to be effective and adequate" to remedy the matters of which they complain. It is also established that a State which pleads non-exhaustion of domestic remedies bears the responsibility of proving the existence of effective and adequate remedies. Furthermore the existence of a remedy must be sufficiently certain for it to be considered effective (cf. Nos. 18926/91 & 19777/92, Dec. 30.8.93, D.R. 75 p. 179). To be effective, a remedy must be capable of remedying directly the impugned state of affairs (cf. No. 13251/87, Dec. 6.3.91, D.R. 68 p. 137).

The Commission considers that Dutch case-law (cf., in particular, the judgments of the Regional Court of Amsterdam referred to above under Relevant domestic law and practice) indicates that there are possibilities for the courts to remedy undesirable situations arising from the application of foreign family law in the Netherlands. It cannot be excluded, therefore, that a solution to the applicants' problems could have been found in this manner. Consequently the Commission considers that proceedings under Section 29 of the Civil Code Book 1 were to be regarded as an effective and sufficient remedy for the purposes of Article 26 of the Convention.

The fact that the applicants, whether or not upon advice of their lawyer, opted for a different course of action does not incur the liability of the Netherlands under the Convention (cf. No. 9022/80, Dec. 13.7.83, D.R. 33 p. 21).

It follows that the applicants have not satisfied the condition laid down in Article 26 of the Convention and that this part of the application must be rejected in accordance with Article 27 para. 3 of the Convention.

3. The applicants finally complain under Article 13 of the Convention that they had no effective remedy against the alleged violations of their rights under the Convention.

Referring to its above findings, the Commission is of the opinion that the applicant had an effective remedy at their disposal, namely proceedings pursuant to Section 29 of the Civil Code Book 1.

It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber President of the Second Chamber

(M.-T. SCHOEPFER) (H. DANELIUS)