AS TO THE ADMISSIBILITY OF

Application No. 35698/97
by Lionel Henry PHILLIPS
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 3 December 1997, the following members being present:

Mrs J. LIDDY, President
MM M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
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 7 August 1996 by Lionel Henry PHILLIPS against the United Kingdom and registered on 22 April 1997 under file No. 35698/97;

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 1954 and currently resident in Bangor, Northern Ireland. The facts of the application, as submitted by the applicant, may be summarised as follows.

A. The particular circumstances of the case

The applicant has a history of mental health problems and was diagnosed in 1989 as suffering from ideas of persecution with a bizarre delusional intensity. In 1990 the applicant was charged with inflicting grievous bodily harm on a neighbour whom he had struck on the head with a hammer, causing a depressed fracture of the skull. The applicant believed this neighbour was persecuting him. The applicant, who was diagnosed as suffering from paranoid psychosis, pleaded guilty, and on 4 April 1990 he was sentenced to a hospital order under Section 37 of the Mental Health Act 1983. The applicant was subsequently released into the community on the condition that accommodation and backup in the community be provided. The applicant continued to be monitored by social services and doctors. In March

1991 it was considered the applicant was in the early stages of a relapse into paranoid schizophrenia, but it was considered that the applicant was not a danger to himself or others and as such compulsory admission to hospital was not necessary.

On 30 April 1991 the applicant moved to Northern Ireland and found accommodation in Bangor. Following co-operation between both the medical and social services of England and Northern Ireland, a social worker visited the applicant at his new address and reported to his former doctor in England that "there appears to be no problem".

Some time after his arrival in Northern Ireland the applicant wrote a letter to the Brookwood Hospital in England, where he had formerly been treated. In that letter he stated that he had, whilst in Brookwood Hospital, been forcibly injected with poisonous substances ordered by a doctor to whom he referred as "the demented Dr. Mengele." This letter raised the concerns of the doctors who had been involved in the applicant's treatment in England. There is a conflict of evidence as to when this letter was sent. The applicant claims it was sent in late May or early June 1991, whereas the hospital state the letter was sent on 1 August 1991. In response to this letter a doctor who had treated the applicant in England, Dr. Robinson, contacted a medical colleague in Northern Ireland, Dr. Thompson, stating that he was concerned by the applicant's letter and considered the applicant's mental state was deteriorating and that an assessment was necessary. Dr. Thompson contacted a consultant who advised that the applicant should be visited in his own home by a doctor accompanied by a social worker.

On 10 September 1991 at approximately 11.15 a.m. the applicant was visited at his home in Bangor by Dr. Thompson and a social worker. These professionals were accompanied by at least two uniformed police officers and members of the ambulance service. It appears that the applicant allowed Dr. Thompson and the social worker to enter his home, but refused admittance to the uniformed individuals. The applicant states that he was then assaulted, taken against his will, and without any explanation, for an assessment at a hospital. In the ambulance the applicant was given a sedative injection. The applicant states that this injection was forced upon him against his will. Following the applicant's admission to Downshire Hospital, the applicant was examined by Dr. McDermott. She concluded of the applicant:

> "I feel he needs a period of assessment and he is unwilling to come in as a voluntary patient."

The applicant states that he awoke at 8 p.m on the day of his admission and then fell unconscious again until the following morning, when he demanded and was permitted to see a solicitor. On 12 September 1991, the applicant was transferred from Downshire hospital to Ards Hospital and the following day he left the latter hospital without permission. On being subsequently contacted, he agreed to return to hospital to receive treatment. The applicant states on his return to hospital he was coerced into agreeing to being injected in order that he be allowed home. The applicant returned to the hospital on a monthly basis until December 1991 to receive injections, after which date he left the country for a period and received no further injections.

The applicant brought proceedings in the High Court of Justice in Northern Ireland for trespass to the person, unlawful arrest, libel and unlawful imprisonment. The proceedings were directed against the Chief Constable, Dr. Thompson, the social worker (Mr. McIntosh) and the Eastern Health and Social Services Board. The action was tried before Mr. Justice McCollum on 12 and 13 June 1995. The applicant appeared in person. The judge held that on 10 September 1991 the applicant had been subject to a consultation of about half an hour by Dr. Thompson and the social worker, during which time an assessment of the applicant

was made and a decision taken to admit the applicant for assessment and that this procedure was in accordance with the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order"). The judge considered that the assessment of the applicant was provoked by the letter to Brookwood Hospital sent on or about 1 August 1991, he also took into account the past history of the applicant's mental health problems and resultant violence. The judge held that the applicant had consented to a sedative injection in the ambulance on the way to the hospital and that after his initial self-discharge from hospital on 13 September 1991, his further visits to the hospital for treatment were voluntary. The applicant's case failed on all counts and on 26 July 1995 judgment was given in respect of each defendant against the applicant. The applicant appealed to the Court of Appeal in Northern Ireland. On 2 May 1996 after an oral hearing where the applicant appeared in person and the defendants were represented by counsel, it was ordered that the applicant give security for the costs of his appeal in the sum of £7,000 and that in default the appeal stand dismissed. The applicant did not subsequently pursue the appeal.

B. Relevant domestic law

Article 4 (2) of the Mental Health (Northern Ireland) Order 1986 provides, so far as relevant:

> "An application for assessment may be made in respect of a patient on the grounds that-
>
> (a) he is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment...
>
> (b) failure to so detain him would create a substantial likelihood of serious physical harm to himself or to other persons.

The 1986 Order further states that prior to making an application for assessment the patient must be interviewed by a social worker who must be satisfied that detention is the most appropriate way of providing the medical care required by the patient (Article 40). It is a further condition that an application for assessment of a patient must be founded upon a medical recommendation by a medical practitioner (Article 4(3)).

COMPLAINTS

The applicant complains that he was unlawfully arrested and detained in violation of Article 5 para. 1 and Article 5 para. 5 of the Convention. He also complains that his attempts to seek compensation were frustrated and that the requirement that he provide security for costs made him unable to pursue an appeal to the Court of Appeal against the judgment of Mr. Justice McCollum.

THE LAW

1. The applicant complains that he was unlawfully arrested and detained in violation of Article 5 para. 1 (Art. 5-1) of the Convention and that he was frustrated in his attempts to seek compensation.

Article 5 para. 1 (Art. 5-1) of the Convention provides, so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> ...

e. the lawful detention ... of persons of unsound mind ...;"

The Commission recalls that in accordance with the case-law of the European Commission and Court of Human Rights, an individual with mental health problems should not be deprived of his liberty unless he has reliably shown to be of "unsound mind" and that there must be objective medical opinion to support such a finding. Further, the mental disorder must be of a kind or degree warranting compulsory confinement (see Eur. Court HR, Winterwerp v. the Netherlands judgment of 24 October 1979, Series A no. 33, p. 18, para. 39).

The Commission further recalls that in deciding whether an individual should be detained as a "person of unsound mind", the national authorities are to be recognised as having a certain discretion since it is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case. The role of the Convention organs is to review under the Convention the decisions of those authorities (see the above-mentioned Winterwerp judgment at p. 18, para. 40).

The Commission notes that in the present case the applicant was visited on the advice of a doctor who had been involved in treating the applicant. A further doctor examined the applicant in his own home and considered that the applicant should be admitted to hospital for an assessment. On arrival at the hospital the applicant was seen by a different doctor, who stated that in her view the applicant needed a period of assessment but was unwilling to come in as a voluntary patient. Further the applicant had a history of mental health problems and of associated violence. In these circumstances, the Commission considers there to have been sufficient objective medical opinion to support the decision to admit the applicant to hospital for an assessment of his mental health, and that the applicant's mental disorder was such as to warrant a temporary compulsory confinement.

The Commission also notes that the circumstances surrounding the admission of the applicant to hospital were considered by Mr. Justice McCollum. The judge, after a two day hearing, held that the detention of the applicant was justified and was in accordance with the 1986 Order. There is no appearance that the procedure stipulated in that Order is not in conformity with the Convention's principles (see above-mentioned Winterwerp judgment at pp. 19-20, para. 45). The judge further held that the applicant was not injected against his will and that after his initial self-discharge the applicant's return visits to the hospital for treatment were voluntary. The Commission does not consider that the facts of the case reveal any arbitrariness or unfairness in the judge's conclusions as to the circumstances of the applicant's treatment or his finding that the doctors were justified in their admission of the applicant to hospital for assessment.

The Commission accordingly concludes that the detention of the applicant constituted a "lawful detention of [a person] of unsound mind" and "in accordance with a procedure prescribed by law".

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

2. The applicant also complains that he had no enforceable right to compensation and invokes Article 5 para. 5 (Art. 5-5) of the Convention.

Article 5 para. 5 (Art. 5-5) of the Convention provides as follows:

"Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an

enforceable right to compensation."

The Commission recalls that the application of Article 5 para. 5 (Art. 5-5) pre-supposes the establishment of a breach of one of the preceding paragraphs of Article 5 (Art. 5) (see e.g. No. 10371/83, Dec. 6.3.85, D.R. 42, p. 128). In the present case no such breach has been established.

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

3. The applicant finally complains that he was unable to pursue an appeal against the judgment Mr. Justice McCollum as he was unable to raise the requisite security for costs of the appeal.

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...".

The Commission recalls that an order to provide security for costs in order to pursue an appeal does not impair the very essence of the right of access to Court (Eur. Court HR, Tolstoy v. United Kingdom judgment of 13 July 1995, Series A no. 316-B, pp. 78-81, paras. 59-67). There is no indication in the present case that the requirement for security of costs was anything other that a reasonable limitation on access to an appeal given the applicant's means and the appeal's prospects of success.

It follows that this part of the application is manifestly ill-founded with in 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