CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33670/96
by Suzie KONIARSKA
against the United Kingdom

The European Court of Human Rights (Second Section), sitting on 12 October 2000 as a Chamber composed of

Mr C.L. Rozakis, *President*,
Mr B. Conforti,
Sir Nicolas Bratza,
Mr E. Levits,
Mr A. Kovler,
Mrs M. Tsatsa-Nikolovska,
Mr G. Bonello, *judges*,
and Mr P.J. Mahoney, *Deputy Registrar of the Court, acting as Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 13 September 1996 and registered on 5 November 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a British citizen, born on 11 July 1978 and living in Derbyshire. She is represented before the Court by Mr A. Wilson, solicitor, of Messrs. Wilson and Kirwan, Derby.

A. The circumstances of the case

A chronology of the applicant, from her birth in 1978 until she reached her majority in 1996, submitted by the Government and not contested by the applicant, is attached to the present decision. In March 1995, the applicant was convicted of common assault, criminal damage and affray. On 17 May 1995, an interim hospital order was made under Section 38 of the Mental Health Act 1983, and the applicant was transferred to Rampton Hospital for assessment. Whilst at Rampton, Dr. Sarna, a consultant psychiatrist, took the view that the applicant suffered from a psychopathic disorder within the meaning of Section 1 of the Mental Health Act, but that that condition was not treatable. An assessment from the applicant's solicitors' own psychiatrist, Dr. Sashidaran, did not reveal criteria for psychopathic disorder. The applicant was discharged from Rampton to Glenthorne Centre on 30 August 1995.

On 23 November 1995 the Birmingham Family Proceedings (Magistrates) Court under Section 25 of the Children Act 1989, granted an application made by the Derbyshire County Council, that the applicant be kept in secure accommodation until 22 February 1996. An order under Section 25 may only be made in respect of a child who is being looked after by a local authority; the applicant had been subject to a full care order since 3 October 1994. The magistrates stated in their reasoning that if she was kept in any other accommodation the applicant was "likely to injure herself or other persons".

The secure accommodation order was due to expire on 23 February 1996. On 22 February 1996 two applications came before Mr Justice Stuart-White in the High Court. The applications were an application by the local authority for a further secure accommodation order to last up to the applicant's eighteenth birthday, and an application by the applicant for revocation of a care order. After considerable discussion about whether the court had jurisdiction to deal with both applications, the judge made a limited secure accommodation order for 24 hours so that the case could be dealt with the next day by the Sutton Coldfield Family Proceedings Court. Directions concerning the future conduct of the care proceedings were given.

On 23 February 1996 an application for a secure accommodation was made by the Derbyshire County Council with the support of the guardian ad litem before the Sutton Coldfield Family Proceedings (Magistrates) Court. Prior to the hearing a psychiatric hospital had refused to accept the applicant as a patient. Glenthorne Centre to which the applicant had first been admitted in August 1995 and where she was detained at the time of the application, provided a report for the Sutton Coldfield Family Proceedings Court. This report, dated 9 February 1996, stated under the heading "Future Recommendations":

> "We are unable to recommend that [the applicant] remains at Glenthorne as we cannot provide a suitable environment for her. She is the oldest member of a mixed group. We have nothing further to offer in terms of treatment."

Under the heading "Education" the report states, in so far as relevant, as follows:

> "[The applicant] does have access to a Studies programme. Since the granting of a further Secure Order in November 1995, [the applicant] attended Studies regularly until recently when following an altercation

with another young person [she] was required to remain on her corridor when the other young person was on the unit. [The applicant] was able to attend Studies and to be out on the unit in the absence of the other young person who was at work all day but, for the most part, she has chosen not to attend studies."

The Glenthorne Centre Report also stated:

"It is acknowledged that [the applicant] has been subject to a great deal of uncertainty concerning her future, the possibility of her being sectioned under the Mental Health Act if Stockton Hall offer her a place and the likely renewal of a Secure Accommodation Order. It is accepted that these uncertainties have had a direct effect on her behaviour."

This passage of the report echoed the sentiments of the guardian ad litem, who in a report of 20 August 1995 (the identity of the guardian ad litem subsequently changed) stated that she was "appalled" by the lack of advance planning or preparation with regard to the future care of the applicant and that some forward planning and identification of a treatment programme was essential. This guardian ad litem proposed a phased plan whereby there would be a final placement in a non secure therapeutic setting prior to the applicant's eighteenth birthday.

The application on 23 February 1996 for a secure accommodation order was opposed by the applicant and her parents. The application was however successful and a further secure accommodation order was made which authorised the applicant's detention in secure accommodation for a period of five months until midnight 10 July 1996, the day before the applicant's eighteenth birthday. In their reasoning the magistrates stated as follows:

"(1) We find that there has been a long history of aggressive behaviour and self harm, which is only controlled whilst under close supervision within a secure environment.

(2) We find although there have been fewer incidents of self harm recently, we believe that there exists a danger of her injuring herself and others.

(3) We find it is clear that all avenues open to help [the applicant] have been closed for one reason or another, leaving the Local Authority with the only option, that being to rehabilitate [the applicant] into the community.

Great emphasis has been put on the fact that if an order is made there will be no time to prepare a rehabilitation place before [the applicant's] eighteenth birthday. This is not our concern ... our duty is to consider if the criteria to make the order under Section 25 [of the Children Act 1989] are made out. On the evidence we have read and heard we are satisfied that the criteria are made [out] and therefore we make an order to midnight on 10 July 1996."

The applicant appealed against the order of 23 February 1996. The appeal was allowed by the High Court on 18 March 1996. Mr Justice Kirkwood varied the order so that it expired at midnight on 5 May 1996. This new order was accepted by the applicant and her parents.

Four days previously, on 12 March 1996, the applicant had been given liberty to withdraw her application for a discharge of the care order as a care plan had been agreed.

On her release from secure accommodation the applicant went to live with her parents.

B. Relevant domestic law

Section 25 of the Children Act 1989, so far as relevant, provides as follows:

"(1) Subject to the following provision of this section, a child who is being looked after by a local authority may not be placed, and if placed, may not be kept, in accommodation provided for the purpose of restricting liberty ("secure accommodation") unless it appears-

(a) that-

(i) he has a history of absconding and is likely to abscond from any other description of accommodation; and

(ii) if he absconds, he is likely to suffer significant harm; or

(b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons."

COMPLAINTS

The applicant complains under Articles 5, 3 and 8 of the Convention. She states that she was deprived of her liberty by the orders of 22 and 23 February 1996 and that she was beyond school leaving age and was given no education whilst detained and thus did not fall within the exception under Article 5 of the Convention that minors may be detained "for the purpose of educational supervision". The applicant further complains that her detention led to intense mental suffering, such as to amount to a breach of Article 3 of the Convention and that further the detention was in breach of her right to family life contrary to Article 8 of the Convention.

THE LAW

1. The applicant complains that she was deprived of her liberty and such deprivation was not for the purpose of educational supervision or for any other permitted reason under Article 5 § 1 of the Convention.

Article 5 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:

...

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants ..."

The Government submit that the restriction on the applicant's liberty between 25 November 1995 and 29 April 1996 did not amount to detention within the scope of Article 5 of the Convention. They quote the Court's jurisprudence in this area and rely upon Nielsen v. Denmark (judgment of 28 November 1988, Series A no. 144). Further and alternatively, the Government contend that the applicant was minor detained by lawful order for the purpose of educational supervision within the meaning of Article 5 § 1 (d) of the Convention.

The applicant replies that the restriction of the applicant's liberty was considerable and that Glenthorne, where the applicant was detained, was a maximum security centre - the equivalent of a medium to high level security prison for adult offenders - and that the ability of the applicant to make visits home was very limited. She disputes that the purpose of the detention was for educational supervision and notes that she was above compulsory school education age.

The Court recalls at the outset that in its Nielsen v. Denmark judgment, it found that Article 5 was not applicable to the hospitalisation of the applicant as that hospitalisation was a responsible exercise by the applicant's mother of her custodial rights in the interest of the child (judgment of 28 November 1988, Series A no. 144, pp. 23-27, §§ 61-73). That reasoning cannot be transposed to the present case as, although the local authority had custodial rights over the applicant by virtue of the care order which was still in force, the orders placing the applicant in secure accommodation were made by the courts - the Birmingham Magistrates Court on 23 November 1995 and the Sutton Coldfield Magistrates Court on 23 February 1996 (varied by the High Court on 18 March 1996). There is no question of the respective courts having custodial rights over the applicant, and so Article 5 applies in the present case.

The next question is whether the applicant was "deprived of [her] liberty" within the meaning of Article 5 § 1 of the Convention. The Court notes that the aim of the orders under Section 25 of the Children Act 1989 is to provide "secure" accommodation. No precise details have been furnished, but the applicant likens the security regime to that of a medium to high security prison for adult offenders, and this is not contested by the Government. The Court finds that the applicant was deprived of her liberty from 23 November 1995 until 29 April 1996.

The Court recalls that no deprivation of liberty will be lawful unless it falls within one of the grounds set out in subparagraphs (a) to (e) of Article 5. However, the applicability of one ground does not necessarily preclude that of another; a deprivation of liberty may, depending on the circumstances, be justified under one or more subparagraphs (Witold Litwa v. Poland judgment of 4 April 2000, p. 14, § 49).

The Court has considered whether, although not referred to by the Government, Article 5 § 1(e) may apply to the applicant's detention on the ground that the applicant had been diagnosed as suffering from a psychopathic disorder, although she could not be detained under the domestic mental health legislation as that disorder could not be treated. The Court notes in this respect that it held, in the above-mentioned Witold Litwa judgment, that there is a link between all the categories of individuals referred to in Article 5 § 1 (e), that is, persons spreading infectious diseases, persons of unsound mind, drug addicts and vagrants. The link is that all those persons "may be deprived of their liberty either in order to be given medical treatment or because of considerations dictated by social policy, or on both medical and social grounds ... a predominant reason why the Convention allows the persons mentioned in paragraph 1 (e) of Article 5 to be deprived of their liberty is not only that they are dangerous for public safety but also that their own interests may necessitate their detention" (p. 16, § 60).

The above considerations apply equally to the present case. The applicant had been diagnosed as suffering from a psychopathic disorder, and there is no suggestion that, at the time of the making of the secure accommodation orders, that disorder no longer existed. Further, the applicant's detention was found, at the making of each order, to be needed as there was a danger of her injuring herself or other persons. There could thus be said to be both medical and social reasons for her detention.

However, in the light of the following considerations, the Court is not required to determine whether the deprivation of liberty was covered by Article 5 § 1 (e) of the Convention as it was in any event covered by the provisions of Article 5 § 1 (d).

Article 5 § 1 (d) authorises, amongst other things, the detention of a minor for the purpose of educational supervision. The applicant was under the age of 18, and therefore a minor, throughout the relevant period. The only question for the Court is thus whether the detention was "for the purpose" of educational supervision (see the Bouamar v. Belgium judgment of 29 February 1988, Series A no. 129, p. 21, § 50).

The Court notes that the orders made by the Magistrates Courts on 23 November 1995 and 23 February 1996 were not isolated orders for detention. They were orders made in the context of a long history of efforts by the applicant's parents and the various authorities to ensure the best possible upbringing for the applicant. In particular, the applicant was subject to a care order, and the application for a secure accommodation order represented the local authority's only way of keeping the applicant in the secure accommodation which they considered she needed.

The Court next notes that the applicant had passed the school leaving age, and apart from the secure accommodation orders could not have been required to attend continuing education. However, the relevant parts of Article 5 § 1 (d) of the Convention are limited to the detention of "minors", and not to the detention of persons below the official school leaving age. The mere fact that the applicant, aged 17, could no longer have been required to attend ordinary school does not taint her detention under a specific order, provided that the detention was indeed "for the purpose of educational supervision".

The applicant claims that the detention was not "for" the purpose of educational supervision, but that any education which was offered was purely incidental to the real reason for the detention, which was (in respect of the first order) "a need for protection and containment pending the actioning of her care plan".

The Court considers that, in the context of the detention of minors, the words "educational supervision" must not be equated rigidly with notions of classroom teaching. In particular, in the present context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned. The Court has no doubt that the orders made by the Magistrates Courts on 23 November 1995 and 23 February 1996, on the application of the local authority, were capable of constituting part of the "educational supervision" of the applicant.

As to the reality of the educational provision in the present case, the Court notes that Glenthorne, to which the applicant was sent, is a specialist residential facility for seriously disturbed young people. As part of its multi-disciplinary approach, it provides an educational programme in which young people are taught in groups of three or four, or sometimes on a one-to-one or a one-to-two basis. Until January 1996 the applicant attended a full range of classes, and that even after an incident with another student she attended some classes and took part in life skills and social skills programmes. The fact that the number of classes attended by the applicant was limited because she chose not to go cannot affect the underlying position, which was that extensive educational provision was made, and the applicant benefitted from it to a certain extent. The present case is therefore to be distinguished from the above-mentioned Bouamar case, in which the applicant was detained "in a remand prison in conditions of virtual isolation and without the assistance of staff with educational training" (above-mentioned Bouamar v. Belgium judgment, p. 22, § 52).

The Court therefore finds that the applicant's detention from 23 November 1995 until 29 April 1996 was justified under Article 5 § 1 (d) of the Convention as it was the detention of a minor "for the purpose of educational supervision".

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

2. The applicant also alleges violation of Article 3 of the Convention, contending that her detention led to intense mental suffering which was incompatible with that provision. Article 3 of the Convention provides as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court recalls that, according to the constant case-law of the Convention organs, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see, for example, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65 § 162).

The Court can accept that the applicant was not very happy to be returned to Glenthorne, but finds nothing in the case-file or in the applicant's submissions which could indicate that the minimum level of severity was reached at which Article 3 applies.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it, too, must be rejected pursuant to Article 35 § 4.

3. Finally, the applicant refers to Article 8 of the Convention, contending that the detention was in breach of her right to respect for her family life. Article 8 provides, so far as relevant, as follows:

"1. Everyone has the right to respect for his ... family life ...

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 ... public safety ..., 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."

The Court notes that the principal interference with the applicant's family life in the present case derived from the care order which had been fully in force since 3 October 1994 with the consent (initially) of her parents. In the context of that care order, taken with the various other proceedings involved, the applicant had been at Glenthorne until January 1995, and, apart from a period in Rampton Hospital, from 28 February 1995 until her discharge on 29 April 1996.

Further, during the period of the applicant's detention under the secure accommodation orders of 23 November 1995 and 23 February 1996, home visits were begun, although in the event only two took place.

The Court finds that any interference with the applicant's right to respect for her family life by the secure accommodation orders must be considered in the light of existence of the care order, which remained in force throughout, and of the difficult situation in which the local authority found itself. In these circumstances, the Court considers that any interference by the

detention with the applicant's right to respect for her family life was justified as being in accordance with the law and necessary in the interests of public safety, for the prevention of disorder, for the protection of the applicant's own health, and for the protection of the rights of others.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Paul Mahoney
Registrar

Christos Rozakis
President