AS TO THE ADMISSIBILITY OF

Application No. 29102/95
by Amanda BULLOCK
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 16 January 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 15 May 1995 by Amanda BULLOCK against the United Kingdom and registered on 8 November 1995 under file No. 29102/95;

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 facts as submitted by the applicant may be summarised as follows. The applicant is an British citizen, born in 1967 and is resident in Durham. She is represented before the Commission by Anthony Pickford, a barrister practising in London.

Particular circumstances of the case

On 14 October 1992 the Magistrates' Court convicted the applicant of allowing her dog, being "of the type known as the pit bull terrier", to stray contrary to section 1(2)(e) of the Dangerous Dogs Act 1991. The court ordered, inter alia, that the dog be destroyed. The prosecution's experts confirmed that the dog was of the relevant type and the applicant's sole expert witness, who challenged this, admitted that she had only examined the dog visually through a car window.

On 16 November 1992 the Crown Court (after a full re-hearing) dismissed the applicant's appeal. Mr. Recorder Lumley of that court noted that the applicant had admitted ownership and that she had allowed the dog to stray but that she had contested the identity of the dog. In referring to section 5(5) of the 1991 Act, the judge noted that the burden of proof was on the applicant and that the standard of proof was on the balance of probabilities. Having heard the evidence, the judge concluded ("not without a great deal of regret") that the applicant had not discharged the burden of proof.

A subsequent application to the Crown Court to state a case to the High Court was dismissed by Mr. Recorder Lumley as frivolous, that judge remarking that the question of dangerousness was not material to the particular offence with which the applicant was charged.

In April 1994 the High Court gave the applicant leave to apply for judicial review of Mr. Recorder Lumley's decision. A recent domestic court judgment had confirmed that, since the American Dog Breeders Association breed standards used in identifying dogs of the type known as the pit bull terrier included two characteristics of behaviour (gameness and aggressiveness), there must be some consideration of these types of behaviour in reaching a conclusion as to a dog's "type".

On 10 May 1995 the High Court dismissed the application for judicial review and refused to refer the case back to the Magistrates' Court for rehearing. The main judgment of the court referred to the evidence presented before the Magistrates' Court together with the recent domestic decision noted above and concluded that there was no evidence before the High Court to demonstrate that the Magistrates' Court's decision would be any different even taking into account those two behavioural characteristics.

The dog (which was seized when the applicant was charged) was subsequently destroyed.

Relevant domestic law and practice

Pit bull terriers were bred as fighting dogs. When dog fighting was banned in the United Kingdom, this breed died out but was re-imported back into the United Kingdom from the United States in the 1970's.

Dogs generally have breed standards which are laid down and recognised by different associations of dog breeders. The English Kennel Club has no standards in relation to pit bull terriers because of the long period when those dogs were not bred in the United Kingdom. The United States, on the other hand, has two associations setting down such standards - the American Dog Breeders Association ("ADBA") and the United Kennel Club ("UKC").

The ADBA exists for pit bull terriers alone, its standards are widely used, it is concerned to take into account fighting standards and the dogs imported into the United Kingdom in the 1970's were registered with the ADBA. Its breed standards mainly relate to the physical characteristics of a pit bull terrier but also refer to the dog's "gameness and aggressiveness". The UKC provides standards for many breeds of dog registered with it (including pit bull terriers) but is mainly concerned with show dogs.

In 1991, and pursuant to considerable public concern about recent attacks on persons by, inter alia, pit bull terriers, parliament enacted the Dangerous Dogs Act 1991 ("the 1991 Act") which Act is ultimately aimed at the eradication of pit bull terriers as a breed from the United Kingdom.

Section 1(1)(a) of the 1991 Act states that section 1 of that Act applies, inter alia, to "any dog of the type known as the pit bull terrier". Section 1(2)(e) of the 1991 Act prohibits an owner of a dog to which section 1 applies from abandoning such a dog or, being the owner or the person for the time being in charge of such a dog, from allowing it to stray. Contravention of section 1 is an offence, carrying a potential punishment of imprisonment for a term not exceeding six months or a fine (section 1(7)) and requiring the court to make a destruction order in relation to the relevant dog (section 4).

Section 5(5) of the 1991 Act, insofar as relevant, reads as follows:

> "If in any proceedings it is alleged by the prosecution that a dog is one to which section 1 ... applies it shall be presumed that it is such a dog unless the contrary is shown by the accused by such evidence as the court considers fit; and the accused shall not be permitted to adduce such evidence unless he has given the prosecution notice of his intention to do so not later than the fourteenth day before that on which the evidence is to be adduced".

COMPLAINTS

1. The applicant complains about section 5(5) of the 1991 Act arguing that it is a denial of the benefit of the presumption of innocence in violation of Article 6 para. 2 of the Convention.

2. She also complains under Article 6 para. 1 of the Convention that she was denied a fair trial as the dog's past character or behaviour was not examined or taken into consideration and because of the decision of the High Court not to return the case for a rehearing.

3. She further complains under Article 8 of the Convention that she has been deprived of her basic right to have a dog as a pet in violation of her right to respect for her private and family life.

4. The applicant also claims that the 1991 Act has denied her peaceful enjoyment of her possessions contrary to Article 1 of Protocol 1 as the measures in question went beyond any fair view of the public interest.

5. In addition, she complains under Article 14 of the Convention that the 1991 Act discriminates against a certain type of dog irrespective of the character or conduct of the relevant dog.

6. Finally, she complains under Article 13 of the Convention that she has no effective domestic remedy because there is no option, other than a destruction order, available to a court having convicted an owner under section 1(3) of the 1991 Act.

THE LAW

1. In the first place, the applicant submits that the presumption as to fact contained in section 5(5) of the 1991 Act is in violation of Article 6 para. 2 (Art. 6-2) of the Convention. She argues that the practical effect of the 1991 Act is that unless very strong evidence is raised by the defence the owner of the dog is convicted and the dog is destroyed. Article 6 para. 2 (Art. 6-2) of the Convention reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Commission recalls that the criteria to be applied in determining whether proceedings involve the determination of a criminal charge are the qualification of the offence in domestic law, the very nature of the offence together with the nature and severity of the penalty which the accused risks incurring (see, for example, No. 13877/88, Dec. 17.5.90, D.R. 65 p. 279). Applying these criteria and in view, in particular, of the sanction set out in section 1(7) of the 1991 Act for a contravention of section 1(2)(e) of that Act, the Commission considers that the proceedings against the applicant constituted the determination of a criminal charge.

The Commission also recalls that the Court, in the Salabiaku

judgment and more recently in the Pham Hoang judgment, stated that the Convention does not prohibit presumptions of fact or law in principle, but does require Contracting States to remain within certain reasonable limits as regards criminal law which limits take into account the importance of what is at stake and maintain the rights of the defence. The Court, in the above-mentioned judgments, also considered whether the application of the relevant presumptions was compatible with the presumption of innocence (Eur. Court H.R., Salabiaku judgment of 7 October 1988, Series A no. 141-A, pp. 14-18, paras. 26-30 and Pham Hoang judgment of 25 September 1992, Series A no. 243, pp. 21-22, para. 33).

In the present case, the Commission recalls that the presumption contained in section 5(5) of the 1991 Act is one as to fact namely, it is presumed that a dog is "of the type known as the pit bull terrier".

The Commission notes what was at stake for the applicant namely, a possible criminal conviction together with a potential penalty of, inter alia, six months imprisonment and the destruction of her dog. However, the Commission finds that it is significant that section 5(5) of the 1991 Act expressly provides an opportunity to the defendant to adduce evidence as to a dog's breeding. The sole issue of substance throughout the domestic proceedings was whether the dog in question was "of the type known as the pit bull terrier". Expert evidence was submitted by the prosecution and the defence as to the dog's breeding before the Magistrates' Court and the Crown Court concluded that the applicant had not, on the balance of probabilities, established that her dog was not of a type known as a pit bull terrier. When domestic case-law then established that two behavioural characteristics included in the ADBA breed standards must be considered in identifying the dog as of the relevant type, the High Court reviewed the evidence before it, and that evidence previously produced, before concluding that there was no evidence to demonstrate that the decision as to the identity of dog would be any different even using these two additional standards.

In such circumstances, the Commission considers that section 5(5) of the 1991 Act falls within reasonable limits, even in light of what was at stake for the applicant, given the opportunity expressly provided to the defence to rebut the presumption of fact and that that section was applied in a manner compatible with the presumption of innocence. Accordingly, the Commission concludes that the applicant's complaint under Article 6 para. 2 (Art. 6-2) of the Convention is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 6 para. 1 (Art. 6-1) of the Convention that the condemnation of a category of dog, on the basis of physical appearance alone without accepting evidence as to past good character and conduct, violates her right to a fair trial set out in Article 6 para. 1 (Art. 6-1) of the Convention. However, having regard to the nature of these submissions, the Commission considers that they are more properly considered under Article 1 of Protocol 1 (P1-1), this complaint essentially being a grievance with the provisions of the 1991 Act itself.

As regards the applicant's complaint that the Crown Court decisions were delivered before the change in the domestic case-law and that the High Court did not then refer the case back for a rehearing, the Commission notes that a right to a rehearing cannot be derived from the provisions of the Convention (No. 7761/77, Dec. 8.5.78, D.R. 14 p. 171). In any event, the Commission notes that the High Court reviewed, in light of that change in the domestic case-law, the evidence which had been presented thus far in the case and took the view that, even taking account of the relevant two behavioural characteristics, the decision of the Magistrates' Court would not be any different. The Commission therefore finds this complaint manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. She further complains under Article 8 (Art. 8) of the Convention that the deprivation of her dog constituted a violation of her right to respect for her private and family life.

As to whether the applicant's complaint is within the scope of Article 8 (Art. 8) of the Convention, the Commission recalls its previous case-law in which it held that the keeping of a pet does not fall within the sphere of the owner's private or family life for the purposes of Article 8 (Art. 8) of the Convention (No. 6825/74, X v. Iceland, Dec. 18 May 1976, D.R. 5 p. 86). While the applicant argues to the contrary, the Commission does not consider that, in the circumstances of this case, there exists any reason to depart from or to distinguish the aforementioned case-law (cf., No. 25517/94, Dec. 3.4.95, unpublished).

Accordingly, the Commission finds this complaint incompatible ratione materiae within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant also claims that the 1991 Act has denied her peaceful enjoyment of her possessions contrary to Article 1 of Protocol 1 (P1-1) as the measures in question went beyond any fair view of the public interest in the control of the use of property.

Article 1 of Protocol 1 (P1-1), insofar as relevant, reads 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 and by the general principles of international law."

The Commission recalls that the applicant's dog was seized and subsequently destroyed and considers that the applicant was deprived of her property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol 1 (P1-1).

In order to be justified, it must be shown that the deprivation was in accordance with the conditions provided for by law and in the public interest. Furthermore, not only must the aim of the deprivation of property be in the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (cf., for example, Eur. Court H.R. Holy Monasteries judgment of 9 December 1994, to be published in Series A no. 301-A, para. 70). This implies that a fair balance must be struck between the demands of the general interests of the community and the requirement to protect the individual's fundamental rights, which balance would not be found if the individual was found to have borne an excessive burden (Eur. Court H.R., Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, pp. 26-28, paras. 69-73).

(a) Subject to the conditions provided for by law

The Commission recalls that the term "law" in the Convention refers not only to compliance with the domestic law but also to the quality of that law requiring it to be compatible with the rule of law so that, inter alia, the law in question must not be arbitrary and must be formulated with sufficient precision to enable citizens to regulate their conduct (Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 41, para. 67 and the Sunday Times judgment of 26 April 1979, Series A no. 20, p. 31, para. 49).

The Commission, having examined the applicant's submissions, finds no evidence that the prosecution of the applicant was other than in accordance with the 1991 Act or that her prosecution or conviction

was arbitrary in its effect. In view of the availability of objective standards by which various characteristics of a dog can be assessed to establish its identity (the ADBA breed standards) and the clear prohibition on allowing such dogs to stray, the Commission does not find that the 1991 Act lacked sufficient clarity to have enabled the applicant to regulate her conduct as regards her dog to avoid prosecution under section 1(2)(e) of the 1991 Act.

(b) Public interest

The Commission considers that it is clear that the provisions of the 1991 Act, which applied in the applicant's case, operate in the interests of public safety.

(c) Proportionality of the deprivation

The applicant disputes the necessity of the mandatory destruction order and contests the denouncing of a breed of dog rather than a particular dog's dangerous behaviour (section 1(1)(a)). In this respect she submits that her dog has never caused any trouble, has lived happily with the applicant's four children and was not causing any trouble when it was found as a stray.

On the one hand, the Commission accepts that the conviction based on breed rather than past behaviour and the consequent mandatory destruction order, being provisions ultimately aimed at eradicating pit bull terriers as a breed from the United Kingdom, are draconian measures. However and on the other hand, the Commission is cognisant of the fact that the pit bull terrier breed was developed as a fighting animal which, prior to the introduction of the 1991 Act, was known to have attacked persons in the United Kingdom causing much public concern. In addition, the Commission does not consider the requirement to prevent such animals straying to be an unreasonably onerous measure on owners of such animals.

In these circumstances, the Commission considers that the provisions of the 1991 Act referred to by the applicant demonstrate a reasonable relationship of proportionality between the means employed and the aim sought to be realised in that a fair balance was struck between the importance of ensuring the safety of the public and the requirement to protect the applicant's rights under Article 1 of Protocol 1 (P1-1).

Therefore the Commission concludes that this complaint of the applicant is manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant further complains under Article 14 (Art. 14) of the Convention arguing that the 1991 Act discriminates against a certain breed of dog irrespective of the character or behaviour of the dog in question. Article 14 (Art. 14) of the Convention, insofar as relevant, reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... political or other opinion, ... property or other status."

The Commission recalls that this Article protects individuals in analogous situations from a discriminatory difference in treatment in the exercise of the rights and freedoms recognised by the Convention and its Protocols. Article 14 (Art. 14) has, therefore no independent existence and the Commission has accordingly considered this complaint of the applicant in conjunction with Article 1 of Protocol 1 (P1-1), into the scope of which latter Article a complaint relating to the seizure and destruction of the applicant's dog could be said to fall.

However, such a difference in treatment will only be discriminatory if it has "no objective and reasonable justification" namely, if it does not pursue a "legitimate aim" and if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, for example, Eur. Court H.R., Darby judgment of 23 October 1990, Series A no. 187, p. 12, para. 31). Furthermore, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law; the scope of this margin will vary according to the circumstances, the subject matter and the background (Eur. Court H.R., Lithgow judgment of 8 July 1986, Series A no. 102, pp. 66-67, para. 177).

The Commission accepts that the 1991 Act singles out, inter alia, owners of pit bull terriers which stray from owners of other dogs which stray and which by their behaviour show themselves to be dangerous. However, the Commission finds that this difference in treatment has an objective and reasonable justification given that this type of dog is bred for fighting and the experience of pit bull terriers in the United Kingdom. The Commission further finds that such difference in treatment pursues the legitimate aim of public safety and demonstrates a reasonable relationship of proportionality between the means employed and the aim sought to be realised in light, in particular, of the reasonable requirement of control through ensuring that the animal does not stray. Having regard, in addition, to the margin of appreciation enjoyed by the Contracting States in this area, the Commission considers that this difference in treatment is not discriminatory within the meaning of Article 14 (Art. 14) of the Convention. Accordingly, the Commission finds this complaint manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

6. Finally, the applicant complains under Article 13 (Art. 13) of the Convention that she has no effective domestic remedy. In this respect, she points to the mandatory nature of the destruction order pursuant to conviction under section 1(2)(e) of the 1991 Act and the inability of the courts to make any alternative orders upon such conviction.

Insofar as the applicant claims that there was no domestic remedy in respect of her complaints that the provisions of the relevant legislation do not comply with the Convention provisions and Protocols, the Commission recalls that Article 13 (Art. 13) of the Convention does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before the national authority on the grounds of being contrary to the Convention (Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 47, para. 85).

Insofar as the applicant complains about the consequences for her of the application of the legislation, the Commission recalls that Article 13 (Art. 13) of the Convention does not require a remedy in domestic law for all claims alleging a breach of the Convention; the claim must be an arguable one (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). In light of the above conclusions of the Commission concerning the applicant's other complaints, the Commission finds that the applicant does not have an arguable claim, of a breach of her rights and freedoms by the application of the legislation in her case, which warrants a remedy under Article 13 (Art. 13) of the Convention.

The Commission therefore considers this complaint manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber	President of the First Chamber
(M.F. BUQUICCHIO)	(C.L. ROZAKIS)