AS TO THE ADMISSIBILITY OF

Application No. 27558/95
by Julian Robert BURROWS
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

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 24 February 1995 by Julian Robert BURROWS against the United Kingdom and registered on 9 June 1995 under file No. 27558/95;

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 applicant is a British national born in 1958 and resident in Kent, England. The facts as submitted by the applicant may be summarised as follows.

A. Particular circumstances of the case

In 1992 following the applicant's separation from his wife ("A"), an agreement was drawn up between the applicant and his wife under the supervision of the Department of Social Security ("DSS") according to which the applicant paid maintenance of £40.00 per month to his two children. The agreement was reached after the applicant's income and outgoings had been assessed. Further, the DSS took into account that the applicant had agreed to sign the joint house over to A, including all the furniture and contents. The property was worth £60,000 and had £6,000 outstanding on the mortgage. The DSS also took into consideration the applicant's commitments to his new family, a new partner and child, for whom he had taken out a mortgage to buy a bungalow. From January 1994, the applicant voluntarily increased payments to the children of his first marriage to £150 per month.

Prior to transferring the property the applicant phoned the Child Support Agency Helpline, a telephone enquiry line set up to help deal with peoples' queries regarding the new Child Support Act 1991 ("the 1991 Act") and the new Child Support Agency ("CSA"). He was informed

that he could expect to pay £200 per month. He considered that he could meet such a liability and therefore went ahead and transferred the matrimonial property to A, as had been agreed.

On 3 September 1993 a Maintenance Application Form ("MAF") was sent to A. In a letter of 9 February 1995 the CSA claims that A returned the completed MAF to the CSA on 29 September 1993, although the applicant later received documentation that showed it had been entered on the computer as having been returned on 7 November 1993. On 29 September 1993 a Maintenance Enquiry Form ("MEF") was sent to the applicant, which he returned to the CSA on 7 October 1993.

On 10 November 1993 the applicant was informed by the CSA that from 29 September 1993 he was liable to pay £78.85 per week under the Child Support Act 1991, that is £341.68 per month, from 29 September 1993, thus overturning the DSS supervised agreement of 1992 referred to above. Included with this notice was a demand for a lump sum payment of £788.50 for the arrears that had built up over a ten week period, (during which the applicant claims he had no knowledge of the CSA's involvement). The CSA also demanded immediate payment of a £78.00 charge for their services, (a £44.00 assessment and review fee and a £34.00 collection fee), to cover collection should the applicant fail to pay the maintenance as requested. In reply to the applicant's query as to the charging of this fee, the CSA informed the applicant by letter of 15 December 1993 that both parents were required to pay the fees for the agency's services irrespective of which parent made the application for maintenance and that if one parent requested, or was required to have the collection service, then both parents were required to take this level of service. They stated that the payment was mandatory and that, although he might not require the collection service at present, the option offered the flexibility of providing collection and enforcement in the future if necessary.

On 21 December 1993 the applicant was informed by letter that a review of his assessment had been carried out and that his weekly liability had been re-assessed at an increased rate of £89.96 per week, to be back-dated to 29 September 1993. By letter of 6 January 1994 the applicant appealed against the re-assessment. By letter of 18 January 1994 the applicant was informed that the Chairman of the Tribunal had made a declaration under Regulation 4 of the Child Support Appeal Tribunal (Procedure) Regulations 1992 that he did not have jurisdiction to entertain a purported appeal, so disposing of the purported appeal.

Following the introduction of new regulations a provision was made for 'phasing in' increases in maintenance. The applicant qualified for the phasing in and requested it on 15 February 1994. The CSA commenced phasing in in the applicant's case on 25 May 1994.

By letter of 10 October 1994 the applicant was informed that his maintenance assessment had been reviewed and that the weekly amount payable from 29 September 1993 was £80.82 per week. Further, following a change in child support legislation and a change in benefit rates, the maintenance assessment was changed so that the applicant was liable to pay £78.76 per week from 7 February 1994 and £80.11 per week from 13 April 1994. Further to these changes and the introduction of phasing-in, a modified assessment of £29.63 per week was payable from 26 May 1994, to be increased to £49.23 from 24 November 1994 and then to £69.23 per week from 25 May 1995. From 23 November 1995 the full amount of maintenance assessment at that time was to become payable.

Appendix A to the letter of 10 October 1994 referred to above set out the applicant's income as follows:

"Net income	£296.06
This includes total gross income of	£409.82
Less Income Tax of	£68.76

Less National Insurance contribution	£25.56
Less 50% occupational pension contributions	£11.82
Less 50% of PEP contributions	£7.62"

On 12 January 1995 the applicant appealed against the assessment. Because the applicant had not appealed within the requisite 28 days, the applicant was requested to explain the reason for the delay. By letter of 14 January 1995 the applicant explained that the basis for his appeal was the fact that the original assessment, and therefore all subsequent reviews etc., appeared to have been carried out without the authority of his former wife since she had only signed the MAF on 7 November 1993 while he had filled in the MEF a month earlier. He therefore claimed that the assessment had been carried out illegally. He claimed that he had only become aware of this on receiving a computer print out from the CSA. By letter of 23 February 1995 the Chairman of the Child Support Appeal Tribunal informed the applicant of his decision not to extend time for the making of an appeal. By letter of 9 February 1995 the CSA explained to the applicant's Member of Parliament that while the information entered on the computer system stated that the applicant's former wife had returned the MAF on 7 November 1993, she had in fact returned it on 14 September 1993, the date stamped on the returned MAF. This document could not be produced as to do so would be contrary to the Data Protection Act and other relevant provisions.

B. Relevant domestic law and practice

Assessment of child maintenance

The Child Support Act 1991 (the Act) provides for the assessment, collection and enforcement of periodical maintenance payable by parents in respect of children not in their care. The Act was designed to improve the position of children whose parents live apart. Research commissioned for the government white paper ("Children Come First", 1990 Cm. 1264) had indicated that 30 % of lone mothers and 3% of lone fathers received regular child maintenance and that the average payment was very low. It was considered that the burden of supporting lone parents fell largely upon the State.

The amount of child support maintenance payable by an absent parent is fixed in accordance with a formula set out in Schedule 1 to the 1991 Act, which takes into account four separate elements: the amount needed to support the child, the assessable income of the parents, the deduction rate or proportion of the assessable income which will go to the child and the protected income, which is intended to ensure that the standard of living of the absent parent is maintained at a minimum level (the amount needed for basic living expenses).

A parent with care of a child may apply to the Secretary of State for a maintenance assessment to be made. Where a parent caring for a child claims state benefits (eg. income support, family credit) he or she may be required to authorise the Secretary of State to recover child support maintenance from the absent parent (section 6).

Once a maintenance assessment is made, any prior maintenance agreement becomes unenforceable insofar as it relates to periodic maintenance payments for the children concerned (section 10 (2)).

To implement the provisions of the 1991 Act, the Child Support Agency (CSA) was established.

Review procedures

Pursuant to sections 17 and 18 of the 1991 Act, a person may request the review of a maintenance assessment by a child support

officer if there has been a material change of circumstances since the assessment was made or where the assessment was made in ignorance of, or in mistake as to a material fact, or was wrong in law.

Pursuant to section 20, any person aggrieved by the decision of a child support officer on such a review may appeal to the Child Support Appeal Tribunal. The President of the Tribunals, a lawyer of at least 10 years' standing, is also President of the Social Security Appeals Tribunals and is appointed by the Lord Chancellor. Each Tribunal consists of a Chairman and two other persons. The Chairman is required to be a lawyer of 5 years's standing, while the other persons are drawn from a panel constituted by the President who have knowledge or experience of the area where they are to work and be representative of the persons living or working in the area.

Appeals on points of law from the Tribunal lie to a Child Support Commissioner who is a solicitor or barrister of more than 10 years standing (section 24). Leave must be granted by either the Chairman of the Tribunal which heard the case or by the Commissioner. If he finds that a decision appealed against is wrong in law, he must set it aside and either make the decision himself or send it back to the Tribunal or to a different Child Support Officer with directions as to how it is to be determined.

An appeal lies on a point of law from the Commissioner's decision to the appropriate court, namely the Court of Appeal or the Court of Session (section 25). Leave must be obtained either from the Commissioner or from the Court of Appeal or Court of Session.

COMPLAINTS

1. The applicant complains under Article 8 of the Convention that by placing a sudden and extortionate demand on him to pay an inflated maintenance bill, so overturning the agreement made through the DSS in 1992, and by then making an arbitrary increase in the assessment, the Government failed to show respect for his family. The applicant claims that the demand was unnecessary as he was already paying maintenance at a realistic level, as had been agreed with the DSS. The applicant claims that not only was there no economic need for the imposition of the increased maintenance payments, but further, that the increased level of payments actually affected the applicant's ability to support his children and himself. He claims that the high payments led directly to the break-up of his second family and that further, he can no longer afford access to his third child, who lives two hundred miles away. He complains that by refusing to recognise travel costs to see his children and refusing to recognise his real housing costs, the UK Government fails to respect the need for continued contact with his children via access and overnight residence.

2. The applicant further complains that, by enforcing payment of a wrongly made and in any case excessive assessment that if correct would only leave him with 14 pence in the pound of gross earnings, the Government have contravened Article 1 of Protocol No. 1 Further, he claims that by threatening to use a deduction from earnings order, bailiff action or a garnishee order against his bank account and to leave him with an 'exempt' income of only £116.60 per week, the Government has adopted a course of action that will prevent him from continuing his profession as a nurse, and has deprived him of his right to the peaceful enjoyment of his possessions. Further, he claims that the money has not been taken as legitimate maintenance for the children but rather to supplement the United Kingdom Treasury in a deceptive and disproportionate way.

3. The applicant further complains under Article 1 of Protocol No. 4 that by threatening him with imprisonment should he fail to fulfil the contractual agreement that he has been forced to enter into with the CSA, the Government have threatened to deprive him of his liberty. The

applicant further invokes Article 2 of Protocol No. 4, complaining that the maintenance assessment has been set at such a high level that he will not be able to travel to work or move his place of residence to find work.

4. The applicant further complains under Article 14 of the Convention that in having selected him as part of a group, "separated and second parents", for a hidden method of taxation using a formula and code, the Government have discriminated against him on grounds of his status.

5. The applicant further complains under Article 13 of the Convention that he has no effective remedy before a national authority since the role of setting maintenance has been removed from the courts. He complains that the review Tribunal set up in place of the courts lacks any real power and that furthermore he has been refused access to a review tribunal. He claims that he has no effective access to judicial review because it would be a very expensive and slow process and that he does not have adequate time before he will be completely destitute.

THE LAW

1. The applicant complains that the imposition of a requirement to pay maintenance to his former wife for the support of his children at a higher rate than he had previously agreed with his former wife interfered with his family life contrary to Article 8 (Art. 8) of the Convention. In particular, he claims that he can no longer afford to visit his third child and that he has been left with insufficient income to pay for his own housing costs. Article 8 (Art. 8) provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls its recent decision in Application No. 24875/94 (Dec. 6.9.96) where it held that the relevant Child Support legislation does not by its very nature affect family life. Further, it recalls that the applicant's complaints must be considered in the context of the financial obligations that are acknowledged to exist between the applicant and his children.

In the light of the factual information provided by the applicant regarding his income and his expenses, the Commission does not consider that the applicant has shown that the effect of the operation of the legislation in his case is of such a nature and degree as to disclose any lack of respect for his rights under Article 8 (Art. 8). In the circumstances the Commission does not therefore find it necessary to go on to consider whether, had there been an interference, it would have been justified within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

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

2. The applicant complains under Article 1 of Protocol No. 1 (P1-1) that he has been deprived of his possessions and of the right

to the peaceful enjoyment thereof. Article 1 of Protocol No. 1 (P1-1) provides 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 preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission recalls that the deprivation of property referred to in the second sentence of Article 1 of Protocol No. 1 (P1-1) is primarily concerned with the formal expropriation of assets for a public purpose, and not with the regulation of rights between persons under private law unless the State lays hands - or authorises a third party to lay hands - on a particular piece of property for a purpose which is to serve the public interest (see. No. 13021/87, Dec. 8.9.88, D.R. 57 p. 268, Nos. 8588/79 and 8589/79, Bramelid and Malmström v. Sweden, Dec. 12.10.82, D.R. 29 p. 64). The Commission therefore doubts that there has been a deprivation of property within the meaning of the second sentence of Article 1 of Protocol No. 1 (P1-1), no property having been taken from the applicant by the State to serve a public purpose.

However, in view of the active role played by the State in assessing and collecting child maintenance under the Child Support Act 1991 and taking into account the fact that A was effectively obliged to request a maintenance assessment in respect of the applicant, since had she refused or failed to do so her social welfare benefits would have been removed, the Commission will assume for the purposes of this application that there was an interference in the applicant's peaceful enjoyment of his possessions as provided by the first sentence of Article 1 of Protocol No. 1 (P1-1).

In that regard, the Commission recalls that the legislation about which the applicant complains is a practical expression of a policy relating to the economic responsibilities of parents who do not have custody of their children. Essentially it relates to the payment by an absent parent to the parent with care of the child[ren] for the purposes of their maintenance. The relevant legislation compels an absent parent to pay money to the parent with custody of the child.

The Commission observes that in all Contracting States to the Convention, the legislation governing private law relations between individuals includes rules which determine the effects of these legal relations with respect to property, and in some cases, compel a person to surrender a possession to another. Examples include the division of inherited property, the division of matrimonial estates, and in particular the seizure and sale of property in the course of execution.

This type of rule, which is essential in any liberal society, cannot in principle be considered contrary to Article 1 of Protocol No. 1 (P1-1). However, the Commission must nevertheless make sure, that in determining the effect on property of legal relations between individuals, the law does not create such inequality that one person could be arbitrarily deprived of property in favour of another (cf. Bramelid and Malmström v. Sweden, Dec. 12.10.82, D.R. 29 p. 82).

The Commission notes that while the applicant complains that the CSA has not backdated any of the changes in assessment, and that the initial payments were wrongly assessed and not in accordance with law, the letter of 10 October 1994 from the CSA to the applicant states that

the re-assessed liability was payable from 29 September 1993. His liability was therefore reduced from £89.96 per week, that the applicant had been held liable to pay by notification on 21 December 1993, to £80.82 per week. That reduction in liability was held to have effect from the first date on which child maintenance was held to be payable. In the circumstances the Commission cannot accept the applicant's claim that the CSA has not backdated the changes in his assessment. The applicant does not claim that the assessment of October 1994 was incorrect in law and the Commission must therefore assume that it is in accordance with the law.

The Commission further notes that, while the applicant states that if the assessment is correct he would only be left with 14 pence for every pound of gross earnings (that is 14% once income tax and national insurance contributions had also been deducted), the calculations in the appendices attached to the letter from the CSA of 10 October 1994 show that the applicant is in fact left with about 50 % of his income once he has paid income tax, national insurance, 50% of his occupational pension, 50% of his PEP contributions and the weekly maintenance payment. As regards the applicant's complaint that he is left with only £116.60 exempt income, the Commission observes that the protected income level is in fact set at £208.22 in respect of the applicant.

As regards whether the relevant measures are in the public interest, the Commission notes that while one specific aim of the measures is to make absent parents, who are able to do so, pay for the maintenance requirements of their children, the measures are not intended solely for the benefit of the children but for the benefit of the tax-payer in general who bears the burden of paying for single parents who claim social welfare benefits. In many cases therefore, while the children are no better off since social welfare benefits are removed and replaced with payments by the absent parent, the burden on the tax-payer in general is reduced. The Commission considers that the aims of reducing taxation and increasing parental responsibility must be considered as in the public interest for the purposes of Article 1 of Protocol No. 1 (P1-1).

The Commission further recalls that, while a Contracting State enjoys a certain margin of appreciation as regards interference with the peaceful enjoyment of possession in the public interest, it must respect a reasonable relationship of proportionality between the means employed and the legitimate aim (see. No. 14265/88, Dec. 19.1.89, D.R. 59 p. 281). In view of the fact that the applicant is not required to pay a disproportionate percentage of his gross income in maintenance payments, approximately 20%, and taking into account the disposable income that he is left with, the Commission considers that the United Kingdom has not acted disproportionately in pursuing the legitimate aims referred to above.

In the circumstances the Commission does not consider the relevant measures to be disproportionate to the legitimate aim they pursue and considers that a fair balance has been struck between the interests of the community as a whole and those of the individual.

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

3. The applicant further complains under Article 1 of Protocol No. 4 and Article 2 of Protocol No. 4 (P4-1, P4-2).

The Commission recalls that the United Kingdom has not ratified Protocol No. 4 such that no reliance can be placed thereon by the applicant.

It follows that this part of the complaint must be dismissed as

incompatible ratione personae within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further complains under Article 14 (Art. 14) of the Convention that in having selected him as part of a group, "separated and second parents", for a hidden method of taxation using a formula and code, the Government have discriminated against him on grounds of his status. Article 14 (Art. 14) provides as follows.

> "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 Commission recalls that Article 14 (Art. 14) of the Convention safeguards individuals placed in similar positions from any discrimination in the enjoyment of the rights and freedoms set out in the Convention and Protocols (see e.g. Eur. Court HR, Marckx v. Belgium judgment of 13 June 1979, Series A no. 31 and Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, No. 11089/84 Dec. 11.11.86, D.R. 49 p. 181). It has no independent existence and takes effect solely in relation to the "enjoyment of the rights and freedoms" safeguarded by those provisions. However, it is autonomous to the extent that its application does not necessarily presuppose a breach of one of those provisions, but it cannot be applied unless the facts at issue fall within the ambit of one or more of the provisions of the Convention (see Eur. Court H.R., Abdulaziz, Cabales and Balkandali v. United Kingdom judgment of 28 May 1985, Series A no. 94, p. 35, para. 71).

The Commission will examine the applicant's complaints insofar as they fall within the ambit of Article 1 of Protocol No. 1 (P1-1). The applicant in the present case implicitly seeks to compare himself with tax-payers in general who are neither separated parents nor second parents. The Commission is of the opinion that these are not analogous situations. There exist significant differences between parents who are separated and other tax-payers. Parents in general have a responsibility for their children, including a financial responsibility, that tax-payers who are not parents do not have. Tax-payers who are parents cannot therefore be compared with taxpayers who are not parents. When parents separate, such that the care of the children is entrusted to one parent, a particular situation arises calling for different legal measures. While it can be assumed that a couple who live together with their children will adopt joint responsibility for their care and maintenance, the same cannot be said of parents who have separated. The relevant child support legislation was adopted to deal with that very difference.

The Commission accordingly concludes that the situation of the applicant is not comparable to that of tax-payers who are either not parents at all or parents who live together with their children. Insofar as the applicant complains that he has been the victim of discrimination in that the child support legislation treats first time parents in the same way as second time parents, the Commission finds that the complaint does not disclose discriminatory treatment for the purposes of Article 14 (Art. 14) of the Convention.

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

5. The applicant further complains under Article 13 (Art. 13) of the Convention that he has no effective remedy before a national authority since the role of setting maintenance has been removed from the courts. Article 13 (Art. 13) provides as follows.

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

The Commission recalls that Article 13 (Art. 13) of the Convention requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (Eur. Court H.R., Powell and Rayner v. United Kingdom judgment of 21 February 1990, Series A no. 172, p. 14, para. 31). The Commission finds that the applicant cannot be said, in the light of its findings above, to have an "arguable" claim that his rights guaranteed by the Convention have been violated.

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

6. Insofar as the applicant's complaint could be considered to give rise to an issue under Article 6 (Art. 6) of the Convention, which provides inter alia that, in the determination of civil rights and obligations everyone is entitled to a fair and public hearing by an independent and impartial tribunal, the Commission recalls its recent decision in Logan v. United Kingdom (No. 24875/94, Dec. 6.9.96). In that case the Commission held that while Article 6 para. 1 (Art. 6-1) guarantees to everyone who claims that an interference with his "civil rights" is unlawful the right to submit that claim to a tribunal satisfying the requirements of that provision (Eur. Court H.R., Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p. 20, para. 44), Article 6 (Art. 6) does not in itself guarantee any particular content for "rights and obligations" in the substantive law of Contracting States (cf. Eur. Court H.R., James and others v. United Kingdom judgment of 21 February 1986, Series A no. 98, p. 46, para. 81, Lithgow and others v. United Kingdom judgment of 8 July 1986, Series A no. 102, p. 70, para. 192) and the claim or dispute to be submitted to a tribunal must be of a "genuine and of a serious nature" (cf. Eur. Court H.R., Benthem v. Netherlands judgment of 23 October 1985, Series A no. 97, p. 14, para. 32).

The applicant does not dispute that his liability has now been correctly calculated under the relevant provisions.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber