AS TO THE ADMISSIBILITY OF

Application No. 12936/87
by Tracey Jane CHURCHILL
against the United Kingdom

The European Commission of Human Rights sitting in private on 14 July 1988, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 (Art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 2 March 1987 by Tracey Jane CHURCHILL against the United Kingdom and registered on 11 May 1987 under file No. 12936/87;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1966 and is resident in Teignmouth, Devon. The facts as submitted by the applicant may be summarised as follows.

The applicant gave birth to a son A. on 2 February 1985. She was at that time living with a boyfriend in sub-standard and inadequate accommodation. Shortly after A.'s birth, his name was entered on the local authority's At Risk register as he was failing to thrive. The applicant attributed the problems of that period to their unsatisfactory accommodation. The applicant and A. were visited regularly by a social worker, who from June 1985 was a Mr. P.

In July 1985, the applicant and her boyfriend moved to a better guest house. During the move, A. was looked after by the applicant's mother. On 28 July the applicant took A. to hospital, where it was discovered that he had a fractured arm. On 29 July 1985 Mr. P.

informed the applicant that the local authority were applying for a care order in respect of A. and the same day the local authority obtained a Place of Safety Order. On release from the hospital on 13 August, A. was placed with temporary foster parents and the applicant visited A. 2-3 times per week. On 18 September 1985, the care proceedings in respect of A. were dismissed, as there was no conclusive evidence that the injury had been deliberately caused or even if it had, whether it had occurred at a time when A. had been living with the applicant.

A. returned to the applicant's care following the hearing and at the end of October 1985 they moved to live with the applicant's mother. Since her mother's home was too small, the applicant was on 31 December 1985 placed in bed and breakfast accommodation, her landlady being a foster mother with the social services. The purpose of this placement was to help the applicant acquire better parenting skills. The local authority also appointed a family aid to provide the applicant with support.

In April 1986, the family aid noticed a mark on A.'s chest (allegedly a cigarette burn) and reported this to the local authority, which on 7 April 1986 obtained a Place of Safety Order in respect of A. and placed A. with foster parents. The applicant had daily access to A. On 23 May 1986 the applicant gave birth to her second child H., a daughter. While still in hospital, the applicant was visited by Mr. P., the social worker dealing with A. and was persuaded to sign a form in which she acknowledged her ultimate responsibility for any injury to A. and agreed to go to live in a mother and baby home in Bristol. On 30 May 1986, the applicant moved to the home in Bristol with H. On 4 June 1986, the local authority made A. a ward of court and A. was sent to join the applicant on 12 June 1986.

After 2 1/2 months in the home, the applicant and her children were placed in an independent flat within the home for her to develop further her ability to cope for herself. However, in October 1986, the local authority apparently became concerned about the applicant's ability to cope with both children. Mr. P. advised the applicant to place A. in foster care until H. was older. When the applicant refused, the local authority decided to recommend to the Court that A. be placed with long-term foster parents with a view to adoption. The local authority also made H. a ward of court.

On 13-14 November 1986, the local authority's application concerning A. came before the Court. The Court heard evidence from the family aid, the social worker dealing with A., and the matron of the mother and baby home on behalf of the local authority and an independent social worker and a worker from A.'s nursery on behalf of the applicant. The applicant was present and represented by solicitor and counsel.

The Court gave its decision on 14 November 1986 and the counsel's note of the judgment records the following reasoning:

> "Mr. P. <the social worker> gave evidence pointing out the fears of the local authority if both children were with the mother. The family aid Mrs. W. also expressed anxiety. But the greatest possible assistance given to me in this case was from Mrs. C. <the matron> who gave a full report from St Johns. Maybe not all that report is from her own knowledge but she has extensive first hand knowledge during the 5 to 6 months that the family have been at St Johns. Mrs. C. is well disposed towards the mother but had to say that there was a risk in allowing both children back with the mother and that she thought this was unacceptable. She recited matters giving her cause for concern, and when cross examined, forceably but fairly, she remained quite adamant that such a position was unacceptable. Mrs. C. was reluctant

to give this evidence as clearly the object of St Johns is to fit mothers to succeed and she is saying in effect that she and St Johns have failed in this case. No one wants to acknowledge failure. She was a most impressive witness, and without evidence to the contrary she has given advice that I really must accept.

There were 2 witnesses called on behalf of the mother, Mrs. B. from the nursery was one and even she had misgivings of the mother. But even so her opinion cannot carry anything like the weight of the evidence of Mrs. C. Mr. C. <the social worker called on behalf of the applicant> acknowledged that his contact and knowledge of the family was very limited. He acknowledged that Mrs. C. knew more than he did. He thought that if it was premature to return the children to the mother immediately he would recommend a further term at St Johns; but of course Mrs. C.'s opinion is that a further period, whether it was 6 months or any other period, would not improve this mother.

This mother can be a good mother but the trouble is, according to Mrs. C. that looking after both children has been on many occasions too much for her. A. is a demanding child and the mother has acknowledged that she cannot cope with him from time to time and she has had to give up at these times. This was even in the cloister of St Johns, and I think that if she was away and on her own it would not be possible to afford such support as will be necessary to get her over her difficulties. The mother says that she can cope with the assistance of a family aid, but in my view this is totally inadequate support, and even massive support would not be enough in this case. Being a mother is a 24 hour a day job and however much help from friends and relatives she receives she will certainly be quite alone overnight. She can cope with one child, and there will be less stress put upon her if she only has H. She can certainly cope with H. and the relationship with this child is different to the mother's relationship with A. The bond with H. is natural and more than one witness has said that the mother and A. bond is not that commonly found between mother and child. Little if any spontaneous cuddling takes place there is little eye to eye contact, and the mutual smiles that are natural are absent, and she cannot provide sufficient stimulation for this boy. This situation obtained even when A. was H.'s age.

Mrs. C. says that there is an unacceptable risk if the children are returned to the mother. I accept that advice. It was argued forceably by Mr. P. <applicant's counsel> that if I adopt the course that the Social Services asked me to take A. will go to a temporary Foster Home for the short term, and in the meanwhile long term foster parents will be found with a view to adoption, which must result in a minimum of 2 moves. He has also said that possible placements may fail. I am urged by him not to take this risk. But the alternative is for the children to go with the mother, and in the light of the evidence of Mrs. C. that there is a very real risk that the placement with the mother would break down because she cannot cope which would mean that A. would be removed at an age where it would be rather more traumatic. I think that the local authority should start the process of placement for adoption now and then the situation for A. would be much less advantageous."

The Court therefore decided that A. was to be placed in the care of the local authority, with leave to place him with long-term foster parents with a view to adoption. The applicant was also refused access, save for terminal access in which to say goodbye to A.

It was ordered that H. could continue to reside with the mother, with a care order to the local authority.

The applicant's solicitors sought advice as to an appeal, but were informed by counsel that in light of the House of Lords decision of G v G (1985, WLR p. 647) such cases were practically unappealable. The applicant was accordingly advised that an appeal would have no prospect of success.

COMPLAINTS

The applicant complains of the decision of the Court to place A. in the care of the local authority and to terminate access. She also complains that the local authority gave misleading evidence at the hearing of the Court on 13-14 November 1986. She complains of a violation of her rights under Article 8 (Art. 8) of the Convention.

THE LAW

The applicant complains that she has been deprived of custody of and access to her son A. She complains that the local authority gave misleading evidence to the Court on 13-14 November 1986 and invokes Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention provides that:

"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 finds that, in accordance with its established case-law, the decision to take the applicant's son into care and terminate access constituted an interference with the applicant's right to respect for her family life protected by Article 8 para. 1 (Art. 8-1) of the Convention (see e.g. Eur. Court H.R., W v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 27, para. 59). The Commission must therefore examine whether this interference is justified under Article 8 para. 2 (Art. 8-2) of the Convention, namely whether it is "in accordance with the law", pursues one or more of the legitimate aims enumerated in Article 8 para. 2 (Art. 8-2) and whether it is "necessary in a democratic society" for one or more of those aims.

The Commission recalls that A. was placed in the care of the local authority after the local authority had made A. a ward of court and following a hearing in the High Court, where the judge found that there was an unacceptable risk if A. remained with the applicant. The Commission accordingly finds that the decision, made pursuant to the court's common law wardship jurisdiction, was "in accordance with the law" and was made for the aim of protecting A.'s health and development.

The question remains whether the decision was "necessary" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention. The case-law of the Commission and the Court establishes that the notion of necessity implies that the interference corresponds to a pressing social need and that it is proportionate to the aim pursued. Further, in determining whether an interference is necessary the Commission and

the Court will take into account that a margin of appreciation is left to the Contracting States, who are in principle in a better position to make an initial assessment of the necessity of a given interference.

When determining whether or not the placing of A. in care and terminating the applicant's access to him were necessary in the interest of A., the Commission observes that it is not its task to take the place of the competent national courts and make a fresh examination of all the facts and evidence in the case. The Commission's task is to examine whether the reasons adduced to justify the interference at issue are "relevant and sufficient" (Eur. Court H.R., Olsson judgment of 24 March 1988, Series A no. 130, para. 68). The Commission has accordingly examined the reasons given in the judgment of the Court on 13-14 November 1986.

The Commission recalls that the applicant was present at the hearing and was represented by solicitor and counsel. The applicant therefore had the possibility of putting forward any views which in her opinion would be decisive for the outcome of the case. With regard to these facts, the Commission finds that the procedural requirements implicit in Article 8 (Art. 8-2) were satisfied since the applicant was involved in the decision-making process to a degree sufficient to provide her with the requisite protection of her interest (see e.g. Eur. Court H.R., W v. the United Kingdom, loc. cit. para. 100).

As regards the decision of the Court to place A. into care and terminate access, the Commission recalls that the Court heard evidence from the family aid, the social worker dealing with A. and the matron of the mother and baby home on behalf of the local authority, and an independent social worker and a worker from A.'s nursery on behalf of the applicant. The Court found that the applicant was unable to cope with both children, and that help from a family aid or her family would not be enough to remedy her problems. The Court concluded that there was thus an unacceptable risk if both children were returned to the applicant and so ordered that A. who had already suffered two injuries of unknown origin and with whom the applicant had been found to have particular problems, should be placed in care. The Court further considered that if A. had to be removed from the applicant at a later age, it would be more traumatic for him. In these circumstances, the Commission finds the decision was supported by "relevant and sufficient" reasons.

The Commission therefore finds that, bearing in mind the margin of appreciation accorded to the domestic authorities, the interference in the present case was justified as being "necessary in a democratic society" for the protection of health and for the protection of rights of others.

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

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)