AS TO THE ADMISSIBILITY OF
Application No. 25959/94
by Jeremy Harvey COHEN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 28 February 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
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 18 November 1994 by Jeremy Harvey COHEN against the United Kingdom and registered on 15 December 1994 under file No. 25959/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1984. He brought domestic proceedings by his mother and next friend. He is represented by Messrs. Teacher Stern Selby, solicitors, London. The facts of the case, as submitted by the applicant's representatives, may be summarised as follows.

The applicant has fragile X syndrome, a recognised condition which gives rise to special educational needs. The local education authority (LEA) made a statement of the applicant's special educational needs. That statement read, under the heading "Appropriate Educational Arrangements":

> "St. Luke's School, Loughton which caters for pupils with moderate learning difficulties and with which parents can liaise on a regular basis.
> (Mr. and Mrs. C. have expressed a preference for The Mead School, Harlow, which also caters for pupils with moderate learning difficulties, which has been agreed, but in accordance with the Authority's home to school transport policy Mr. and Mrs. C. will be responsible for all travelling expenses and arrangements)."

In 1989, the applicant became a registered pupil at the Mead School, a local authority school some 14 miles from his home. The LEA in fact provided transport at reduced cost, but not free. St. Luke's

School is another local authority school under 3 miles from the applicant's home. The LEA would have provided free transport to St. Luke's.

On 30 March 1990 and again on 28 February 1991 the LEA made known its decision that it was under no obligation to provide free transport. The applicant applied for judicial review of the decision. Mr. Justice Jowitt found against the applicant on 12 March 1993. He considered that there was no concurrent right to a school of the parents' choice and to free transport to that school. He also held that the Education Act 1980, which provides for parents' choice of schools, did not apply where a child has special educational needs.

The applicant appealed to the Court of Appeal, which dismissed the appeal on 24 November 1993. Lord Justice Staughton recalled that LEAs may make such provision for transport to and from schools as they think necessary, and such transport is to be provided free of charge (Education Act 1944, Section 55). Further, an LEA must pay for transport if its failure to do so would provide parents with a defence under Section 39 (2) of the Education Act 1944. Section 39 requires parents to ensure the attendance of children at schools where they are registered, and Section 39 (2) provides, so far as relevant, for a defence where the parents prove that the school is not within walking distance (three miles for a child who has attained the age of eight) unless the LEA has made suitable arrangements for transport or for attendance at a nearer school.

The judge further recalled that the Education Act 1981 amended the Education Act 1980 expressly to provide that the provisions of the 1980 Act relating to parental choice of school (in particular, Section 6) did not apply to a child with a statement of special educational needs, such as the applicant. The judge referred to the applicant's various arguments as to how a right to free transport to the Mead School could be derived from the legislation, and did not accept any of them.

The other two judges of the Court of Appeal gave separate judgments agreeing with Lord Justice Staughton.

The House of Lords refused leave to appeal to it on 23 May 1994.

COMPLAINTS

The applicant alleges violations of Article 2 of Protocol No. 1 to the Convention, and of Articles 13 and 14 of the Convention.

In connection with Article 2 of Protocol No. 1, the applicant contends that the provision of schooling and free transport, and of statements of special educational needs, are functions which the state assumes in relation to education. He points out that the Mead School better reflected his parents' philosophy of education and teaching than St. Luke's, and submits that the LEA named St. Luke's because it was closer and therefore cheaper for the LEA. For the applicant, it is implicit in domestic law that the parents' right of choice may be based on personal convictions, and he submits that the need for this choice is at least as great in the case of children with special educational needs as in the case of other children. He considers that the authority cannot respect his parents' right to ensure such education and teaching if they permit him to go to the school they want him to attend, but then fail to provide free transport.

To the extent that the applicant is excluded from the parental choice provisions of the 1980 Act, the applicant considers that Article 14 of the Convention has been violated. He points out that if he did not have special educational needs, his parents would have a statutory right to choose his school, and that if there were not a statement of his needs, the LEA would not have specified a school for him to attend.

The applicant also alleges a violation of Article 13 of the Convention, because the construction of domestic law prevented the domestic courts from giving effect to the rights set out in Article 2 of Protocol No. 1, and in Article 14.

THE LAW

1. The applicant alleges a violation of Article 2 of Protocol No. 1 (P1-2) to the Convention by virtue of the refusal of the local education authority (LEA) to pay for the cost of his transport to the school of his choice. Article 2 of Protocol No. 1 (P1-2) provides as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Commission notes that the United Kingdom has entered a reservation to Article 2 of Protocol No. 1 (P1-2), which reads as follows:

> "... in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only in so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure."

Article 64 (Art. 64) of the Convention provides as follows:

> "1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article (Art. 64).
>
> 2. Any reservation made under this Article (Art. 64) shall contain a brief statement of the law concerned."

In the light of developments in the case-law of the Convention organs on Article 64 (Art. 64) of the Convention, questions may arise as to whether the reservation entered to Article 2 of Protocol No. 1 (P1-2) is valid (see, in particular, Eur. Court H.R., Belilos judgment of 29 April 1988, Series A no. 132, pp. 25 - 28, paras. 52 - 59), and if it is valid, whether it is applicable to the present case which concerns largely provisions which entered into force subsequent to the making of the reservation (see Eur. Court H.R., Fischer judgment of 26 April 1995, Series A no. 312, pp. 18 - 20, paras. 37 - 41). The Commission is not, however, required to resolve these questions as the application is in any event inadmissible for the following reasons.

Article 2 of Protocol No. 1 (P1-2) constitutes a whole that is dominated by its first sentence (Eur. Court H.R., Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1986, Series A no. 23). In the present case, there is no question of the applicant having been excluded from the educational facilities of the State: on the information submitted to the Commission he has attended a local authority school throughout, and the applicant's parents are satisfied with that school. Moreover, the applicant has been educated throughout at a school which conformed with the applicant's parents' "religious and philosophical convictions" - the Mead School.

The only question for the Commission is therefore whether Article 2 of Protocol No. 1 (P1-2) can be interpreted in the present case as

requiring the State to meet the cost of transport to the school of the parents' choice where another school is available locally which would provide equivalent educational facilities but is not the favoured school of the parents.

The Commission first notes that although the applicant submits that the local authority named St. Luke's School as appropriate because it was closer and therefore cheaper, it is not contended that the school would not have been adequate for the applicant's needs. The Commission must therefore accept the statement of educational needs when it states that St. Luke's would be an appropriate educational establishment.

The Commission next recalls that it has held in the past that a State has no positive obligation, under the second sentence of Article 2 of Protocol No. 1 (P1-2), to subsidise a particular form of education in order to respect parents' religious and philosophical convictions, but that it is sufficient to satisfy its obligations under Article 2 that the State respects parents' religious and philosophical convictions within the existing and developing system of education: in the case in question, Article 2 of Protocol No. 1 (P1-2) was held to require the State neither "to make a grant to the school nor to provide financial assistance to the pupils" (No. 10476/83, Dec. 11.12.85, D.R. 45, p. 143 at pp. 148, 149).

The present case is similar. No objections to St. Luke's School have been made which could indicate that the applicant's attendance at that school could conflict with the applicant's parents' religious or philosophical convictions. The applicant has been attending a school which the LEA and the parents regard as satisfactory.

The Commission concludes that Article 2 of Protocol No. 1 (P1-2) cannot be used to derive a right to free transport to the school of one's choice where an alternative is available which would involve free transport and which has not been shown to conflict with the parents' convictions.

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

2. The applicant also alleges a violation of Article 14 (Art. 14) of the Convention. He considers that he has been discriminated against because a statement of educational needs has been made in his case, and if it had not, then he would have had the right of parental choice under Section 6 of the Education Act 1980. Article 14 (Art. 14) of the Convention provides:

> "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."

Article 14 (Art. 14) prohibits treating differently, without any objective and reasonable justification, persons in "relevantly" similar situations (cf. Eur. Court H.R., Fredin judgment of 18 February 1991, Series A no. 192, p. 19, para. 60).

The Commission notes that in the present case the domestic courts approached the case on the hypothesis that the parental preference provisions in Section 6 of the 1980 Act were applicable and considered that, even in such a case, the LEA would not have been obliged to pay the cost of transport to the school of the parents' choice if suitable arrangements could have been made for attendance at a nearer school.

Accordingly, no relevant difference of treatment has been shown

to exist which could constitute discrimination against the applicant in the enjoyment of his Convention rights.

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

3. Finally, the applicant alleges a violation of Article 13 (Art. 13) of the Convention.

The Commission recalls that the guarantees of Article 13 (Art. 13) apply only to a claim which can be regarded as "arguable" (cf. Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, p. 14, para. 31, with further references). The Commission has rejected the applicant's substantive claims as being manifestly ill-founded. For similar reasons, it finds that they cannot be regarded as "arguable".

It follows that this part of 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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)