AS TO THE ADMISSIBILITY OF

Application No. 32788/96
by Robert CRABTREE
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 14 May 1996 by Robert CRABTREE against the United Kingdom and registered on 27 August 1996 under file No. 32788/96;

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 1957 and resident in Bristol, England. Before the Commission he is represented by Brian Cox, a solicitor practising in Bristol. The facts as submitted by the applicant may be summarised as follows.

A. Particular circumstances of the case

The applicant is a single man who was appointed as a foster carer by the Avon County Council in 1988. The applicant was entrusted with the long term care of between two and three teenage persons at any one time and although his methods were unorthodox, by all accounts he proved successful as a foster carer, in particular with young persons who had proved very disruptive.

In February 1991, the applicant was favourably reviewed by the County Council as part of the review process of all persons appearing on the foster carer register. Later that year, the applicant became aware that one of the teenage children in his care had taken an interest in pornography and had videotaped a sex orientated film. In order to deal with the situation the applicant discussed the video with

the young person and also discussed with him a pornographic magazine in order to put such matters into proportion to life generally. However, in October 1991 the social services department received a report which expressed concern that a child placed with the applicant had been shown a pornographic video and magazine. At the request of Mrs B., the newly appointed service manager, the matter was investigated and the results were presented to a meeting of the fostering panel of which she was chairperson on 26 November 1991.

Following this meeting, Mrs B. wrote to the applicant telling him that although the panel had received a clear account of his reasons for allowing the video to be shown it was concerned that he did not appear to accept that his behaviour was inappropriate. Mrs B. also informed the applicant as to the conclusions of the panel, namely that
(a) the care and commitment which he offered to children in his care was highly valued by the social services department;
(b) that registration for the children in his care be continued, but decisions as to further placements be deferred and...
(d) that he be informed within 5 days of a plan of how the social services department intends to proceed.

According to the applicant, he was asked to undertake a programme of work with the National Society for the Prevention of Cruelty to Children (NSPCC) but when no specific reason was given for this request, he feared a hidden agenda and was reluctant to agree. The programme did not go ahead. From February 1992 onwards the applicant alleges that criticisms were made and problems created for him by support workers and in particular the support worker who had been assigned to work with him, but had no experience in dealing with young persons in the setting of a foster carer's home.

By letter of 30 April 1992, the applicant was informed of the foster panel's regret at his decision to withdraw from the programme with the NSPCC. He was informed that the work was to address the following specific areas:

> "Issues around sexuality, sex education and gender issues. The issue of your vulnerability as a single male foster carer. To assess the damage to your relationship with the social services department and how trust might be rebuilt."

However, given that this work remained undone, the panel informed the applicant that it was not in a position to make any decision regarding his future registration as a foster carer.

The applicant requested a change of support worker on 15 April 1992 and also stated that he did not want that support worker to attend the review meeting, which was due to take place in accordance with his statutory review on 18 May 1992. The applicant believed that the service manager, Mrs B. and her support workers had difficulty with the applicant's methodology and that they were undermining the value of his work with the foster children in his care. The applicant lodged formal complaints against the Family Placement Team on 1 July and 14 July 1992, some of which were investigated by a Mrs W., service manager, who upheld them.

On 30 June 1992 the applicant submits that he met with the team manager of his social worker, Mr R., to discuss the matters in dispute and to complete the statutory review which had commenced in May 1992. Mr R. agreed to change the support worker in the light of the applicant's concerns.

Recognising that relations between the Family Placement Team and the applicant had deteriorated considerably, the Assistant Director of the Department of Social Services of the Avon County Council, convened a meeting on 9 October 1992. This meeting was attended by eight people including Mr R., area regional manager for the area, Mr Rg., the team

manager of the family placement team and Miss L., a family placement team social worker. At the meeting concern was expressed about the applicant's attitude towards the department and the relationship between them had broken down. It was decided that a meeting of the fostering panel should be arranged urgently to review the applicant's registration as a foster carer and that a recommendation should be made to the panel that he be deregistered. The applicant submits that he was unaware of this meeting and the matters which were discussed. Furthermore, he was told that a unanimous decision was taken at that meeting that he posed an unacceptable level of risk, that he should be removed as a foster carer and that there should be a formal meeting of the fostering panel to make the final decision.

On 12 October 1992 the applicant was invited to a meeting of the fostering panel due to take place on 14 October. The social worker offered to deliver the relevant papers for the meeting to him so that she could discuss them with him. However, the applicant recalls that he simply received the documents the day before the meeting, which gave him insufficient time to consider the matters or to gather any evidence which would rebut the suggestions made and the decision to deregister him as a foster carer.

The special meeting of the fostering panel took place at 2.30 pm on 14 October 1992. In the absence of Mrs B., whose presence was considered inappropriate in the light of the complaints made against her by the applicant, it was chaired by Mr R. The other panel members were Mr Rg, Miss B. and Miss W., team managers in the department. The applicant had already submitted complaints against Mr R., Mr Rg and Miss W. The meeting was also attended by Miss L. and Mr M. against whom the applicant had also lodged complaints. The applicant was accompanied by Mrs M., chair of the Avon Family Placement Association whose role was that of an advocate/moral supporter to the applicant. The purpose of the meeting was to consider the applicant's statutory review and other matters of concern relating to his registration as a foster carer. It was also intended to consider the recommendation received from the meeting of 9 October 1992 that the applicant be deregistered.

The applicant was invited to join the meeting at 2.45 pm and he immediately objected to the presence of those persons against whom he had made complaints. When the chairperson, Mr R., decided to proceed notwithstanding the objections the applicant was asked to present his case which he did until 4 pm at which time he was asked to leave. Not having completed his submissions he left the meeting under protest. The fostering panel continued with its deliberations (Miss L. and Mr M. who were not members of the fostering panel also participated) and following a reminder from Mr R. that

> "whatever the decision it had to be based on what was reasonable given all the factors presented in the reports and that the welfare of the children and young people was of paramount consideration,"

the panel took the decision to deregister the applicant. The reasons given for this decision were the applicant's inability to work in partnership with Avon social services department, in particular with relation to agreed care plans for some of the young people placed with him and concerns about aspects of the applicant's approach to the care of young people.

In January 1993 the applicant instituted proceedings for judicial review seeking an order that the decision to remove him as a foster carer should be quashed on grounds, inter alia, that there had been a breach of natural justice in that the panel included persons against whom he had made complaint and that he had insufficient time to prepare and present his case. Following a hearing in March 1993, at which the applicant was represented by counsel, Thorpe J noted that

"although at first sight the procedure appears something less than fair, it is very important to realise that the panel assembled ... was not a panel hand-picked for a specific task. The fostering panel is a panel that discharges its necessary responsibilities by regular meetings in relation to all registered carers."

The judge noted that the only exceptional member of the panel was Mr R., the chairperson, who was there as Mrs B.'s senior. The judge also considered it necessary to look at the reality of the situation (in particular that the relationship between the applicant and the department had been deteriorating rapidly for six months, that the relevant reports had been available to the applicant and he was able to put his own views to the panel) and the judge finally concluded that the rules of natural justice were not breached to a degree that would justify the court's intervention.

In a judgment of 15 November 1996, delivered by Lord Justice Neill, the Court of Appeal admitted that at first sight the procedure which was adopted appeared less than fair but that regard had to be had to the context, in particular, the nature of the decision-making body in question and the nature of its task. In this regard, it was noted that decisions of administrative bodies have to be taken by those with knowledge of the facts and that members of those bodies may, because of previous knowledge, have a predisposition towards a certain result. However, the court did not find that this meant that such a body could not reach a fair decision. Referring to the facts, the Court did not find that the decision reached on 14 October amounted to an uncritical acceptance of the recommendation made following the meeting on 9 October. Furthermore, the Court concluded that the question of the applicant's continuing registration as a foster carer was considered by the panel with some care and at length at the meeting on 14 October 1992, given their duty to place the interests of the children in their care at the forefront of their deliberations. It was noted that the difficulties between the applicant and the social services department were serious and getting worse and that given the complaints made by the applicant, it would have been unrealistic to have expected the council to have set up a fresh body to consider his annual review. The Court noted that the panel took the exceptional course of inviting the applicant to attend the meeting and that he had the benefit of an advocate/moral supporter. In conclusion the Court found that

"in the circumstances of the case the panel as constituted under the chairmanship of Mr R., the general manager for the area, was not an unfair body to adjudicate."

Furthermore, the Court did not find that the presence of Miss L. and Mr M. was unfair given that they had been asked to work with the applicant in the Summer of 1992 to look at some of the areas of concern. Those who attended the fostering panel were those who had been most closely involved with the applicant and who could best decide whether or not he could remain as a carer. As regarded the complaints of lack of time, the Court noted that the applicant was well aware of the difficulties which had arisen over the previous year, he had the reports and a considerable number of matters were canvassed in his presence. Accordingly the appeal was dismissed.

B. Relevant Domestic Law

The Foster Placement (Children) Regulations 1991 came into force on 3 April 1991 pursuant to the Children Act 1989. Under regulation 4(1) the approving authority is required to review at intervals of not more than one year the suitability of the foster carer and his household. On conclusion of this review, under regulation 4(3) the approving authority must prepare a report and and give notice to the foster-parent of its decision. Under regulation 4(4) where on review the approving authority is no longer satisfied that the foster-

parent and his household are suitable, it may terminate the approval from a date to be specified in the notice given under reg. 4(3).

COMPLAINTS

1. The applicant complains that the decisions of the fostering panel on 9 October 1992 and 15 October 1992 are in breach of Article 6 para. 1 of the Convention in that:

(a) that the principal decision to remove the applicant as a foster carer was made on 9 October 1992 at a meeting attended by persons who could not make a fair and reasoned judgment as they were persons in dispute with the applicant and were sitting in judgment of the complaints raised against them;

(b) that the applicant was unaware of the meeting of 9 October 1992, was not given the opportunity to present argument or evidence to the panel and in consequence that there was no fair hearing in respect of a matter which has affected the applicant's livelihood;

(c) that the persons sitting in judgment at the meeting on 14 October 1992 were those who were in dispute with the applicant and in consequence prejudiced and unable to make a fair judgment;

(d) that the applicant was not given full proper advance notice of the matters being raised against him and was given little time to obtain evidence to prepare for the hearing;

(e) that the applicant was excluded from parts of the meeting which were addressed by those presenting against him, namely Mr M. and Miss L., and those persons were given the opportunity to address the panel prior to the applicant's admission to the meeting and remained present whilst the panel made their final decisions;

(f) that the applicant was not given full or sufficient time to present arguments to the panel and that the panel was unaware of the full extent of his comments on very detailed and complicated papers which had been presented to the panel by themselves and upon which their decision was presumably made;

(g) that the applicant was never given the opportunity to examine witnesses;

(h) that the social services fostering panel and social workers having advised the applicant to lodge complaints acted unreasonably and unfairly in considering those complaints and have used those matters unjustly and in breach of the spirit of the complaint procedure to justify their decision to remove him as a foster carer and took no account at all of the considerable success which he has had with young teenagers and the damage caused to them by the deregistration.

2. The applicant also complains that contrary to Article 14 of the Convention he has been discriminated against as a single male foster carer with regard to his dealing with young persons.

THE LAW

1. The applicant claims that the fostering panel which took the decision to deregister him as a foster carer did not constitute a fair hearing by an independent and impartial tribunal consistent with Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an

independent and impartial tribunal established by law."

In relation to the applicability of Article 6 para. 1 (Art. 6-1) to the present case, the Commission finds that it does not have to decide whether the right to work as a home foster carer is a "civil right" within the meaning of Article 6 para. 1 (Art. 6-1) because the application is manifestly ill-founded for the following reasons.

The Commission recalls that although Article 6 para. 1 (Art. 6-1) embodies a "right to a court", it does not oblige Contracting States to submit disputes over civil rights to a procedure which at every stage fulfills the requirements of a tribunal under Article 6 para. 1 (Art. 6-1). (Eur. Court HR, Le Compte, Van Leuven and de Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p. 23, para. 51). Given that the fostering panel may not have satisfied the requirements of Article 6 para. 1 (Art. 6-1) as to impartiality and fairness, it falls to the Commission to examine whether the applicant had access to an independent judicial body with full jurisdictional control control over the prior procedure which itself provided the guarantees of Article 6 para. 1 (Art. 6-1) (see e.g. Eur. Court HR, Bryan v. the United Kingdom judgment of 22 November 1995, Series A no. 335-A, p. 17, para. 40).

The Commission notes that the applicant sought judicial review in courts at two levels of jurisdiction of the decision of the fostering panel to deregister him as a foster carer. It further notes that the judicial review proceedings could not result in the court substituting its own decision on the merits of the fostering panel's decision. Nevertheless, in this case, it was open to the domestic courts to quash the panel's decision if it found that it had been made by reference to irrelevant factors or without regard to relevant factors; if the evidence relied on was not capable of supporting a finding of fact; if the decision was perverse or irrational or the procedure disclosed unlawfulness, breach of natural justice or unfairness (see eg. Eur. Court HR, Bryan, op. cit. paras. 25-26, 44).

In the present case there was no challenge made in the domestic courts as to the reasoning of the fostering panel and there was no dispute as to the facts. The High Court and the Court of Appeal had jurisdiction to entertain the procedural grounds of the applicant's application and the Commission notes that these submissions referred essentially to questions of fairness and impartiality, i.e. whether the fostering panel was biased in reaching its decision. In concluding that the panel did not act unfairly, the Commission finds that the domestic courts carefully examined the nature of the fostering panel, the statutory duty which it exercised and the need for those taking the decision about the applicant's registration as a foster carer to have special knowledge of the situation in question.

For these reasons, given the special functions of the fostering panel and the nature of the complaints raised by the applicant, the Commission finds that in this case judicial review of the panel's decision and procedures by the High Court and Court of Appeal fulfilled the requirements of Article 6 para. 1 (Art. 6-1).

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. In relation to the applicant's complaint under Article 14 (Art. 14) together with Article 6 (Art. 6) that he was the victim of discrimination on the grounds of his status as a male foster carer the Commission recalls that difference in treatment of people in analogous situations is only contrary to Article 14 (Art. 14) where it lacks reasonable and objective justification (see eg. Eur. Court HR, Van der Mussele v. Belgium judgment of 21 November 1982, Series A no. 70, Fredin v. Sweden (No. 1) judgment of 18 February 1991, Series 1 no.

192, p. 19, para. 60). Notwithstanding that the applicant has failed to show that he is in an analogous situation to a female or married foster carer, the Commission notes that he has failed to substantiate the complaint that he has been subjected to any difference of treatment.

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber