AS TO THE ADMISSIBILITY OF

Application No. 27842/95
by Samuel CROTHERS
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 3 April 1995 by Samuel CROTHERS against the United Kingdom, and registered on 11 July 1995 under file No. 27842/95;

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 1957 and is resident in London. He is represented before the Commission by Anthony Pickford, a barrister practising in London.

Particular circumstances of the case

On 25 October 1991 the applicant's father's dog was seized by police and his father was charged with various offences in relation to that dog under the Dangerous Dogs Act 1991 ("the 1991 Act"). Pursuant to a prosecution notice of discontinuance, the Magistrates' Court discontinued these proceedings.

However, on 6 March 1992 the Magistrates' Court made an order for the destruction of the dog, further to an application by the prosecution pursuant to section 5(4) of the 1991 Act of which no notice had been given to the applicant's father. On judicial review the High Court quashed the decision of the Magistrates' Court finding that the rules of natural justice meant that the applicant's father should have been given the opportunity to be heard and that section 5(4) should not have been used in this particular case because there had been a previous prosecution (albeit discontinued).

Subsequently, ownership of the dog was transferred to the applicant and on 27 July 1992, when the dog was temporarily released to the applicant, the applicant identified himself to the police as the owner. Fresh proceedings under section 5(4) of the 1991 Act were issued and the hearing was fixed for 13 October 1992. On 12 October 1992 the applicant's solicitor wrote a detailed letter to the court indicating clearly that the applicant would not be contesting the proceedings as the dog had been examined on behalf of the applicant by two experts who had indicated that it would qualify as a dog "of the type known as the pit bull terrier" and thus he had advised his client that there was little point in opposing the proceedings.

However, on the day of the hearing the applicant denied that he had instructed his solicitor to indicate that he would not be opposing the proceedings and requested an adjournment to obtain other legal representation. He was refused an adjournment and he together with his expert witness were not allowed to give evidence. Having heard the prosecution evidence as to the dog's breeding the court made a destruction order in relation to the dog.

A subsequent application for judicial review to the High Court, raising, inter alia, the question of whether the applicant and his expert should have been heard at the Magistrates' Court hearing, was unsuccessful, judgment being given on 13 October 1994. Having found that the Magistrates' Court were within their jurisdiction this time in employing section 5(4) of the 1991 Act (because ownership of the dog had changed in the meantime), the High Court noted the following points as significant.

In the first place, the High Court noted that not only did the applicant's solicitor write to the Magistrates' Court the day before the relevant hearing stating that the applicant would not be opposing the application but that solicitor outlined in that letter in some detail that two experts had been briefed on the applicant's behalf, had examined the dog and had identified the dog as a dog "of the type known as the pit bull terrier". It was for that reason, according to the solicitor's letter, that the solicitor had advised that there was no point in contesting the application for the destruction of the dog. The High Court went on to find that the applicant had failed to explain at all his allegation, that his solicitors had acted without his instructions, even though he had been ordered by the High Court to file very full evidence about the relevant Magistrates' Court hearing and when he had almost two years before the High Court appeal hearing to formulate this explanation.

Secondly and in relation to the evidence which the applicant had wished to present as to the dogs identity, the High Court noted that the applicant filed two expert affidavits with the High Court which stated that the dog was not of the relevant type. However, the applicant's own affidavit before the High Court stated that one of these latter experts was one of the experts who had already confirmed to the applicant's solicitor that the dog was of the pit bull terrier type. The other expert (whom it appears attended the hearing in the Magistrates' Court in October 1992 with the applicant) described his evidence as based on his previous "acquaintance" with the dog when it was owned by the applicant's father.

The High Court therefore took the view that, while the Magistrates' Court was not correct in relying on section 5(5) of the 1991 Act to exclude the applicant's and his expert's evidence, the substance of the Magistrates' Court's decision in this respect was not wrong and that the interests of justice would not be served by sending the matter back for a rehearing. The applicant subsequently applied for leave to appeal to the Court of Appeal and this was refused on 16 March 1995. The dog has since been 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. 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") and, pursuant thereto, the Secretary of State made the Dangerous Dogs Compensation and Exemption Schemes Order 1991 ("the 1991 Order"). The 1991 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(3) of the 1991 Act prohibits having any dog to which section 1 applies in one's possession or custody after the 30 November 1991 (unless exempted under the 1991 Order). Contravention of section 1(3) 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(4) states that where a dog has been seized by the police and it appears that no one has been prosecuted for an offence under the 1991 Act in relation to that dog (whether because the owner cannot be found or for any other reason), a Justice of the Peace shall order the destruction of the dog if it is a dog to which section 1 of the 1991 Act applies.

The exemption scheme is detailed in the 1991 Order which, inter alia, allowed owners to retain possession of their dogs. In order to be so exempted the dog had to be, inter alia, registered with the police (prior to the 12 October 1991 in the case of an adult dog and prior to the 30 November 1991 in the case of a puppy), neutered, permanently marked as a dog of the relevant type and insured. A fee was also payable.

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 mainly complains under Article 6 para. 1 of the Convention that he was denied the opportunity to make submissions and produce expert evidence before the Magistrates' Court in October 1992.

2. He also complains that his relationship with his dog came within the scope of his right to respect for his private and family life and that the seizure and destruction of the dog failed to show sufficient respect for those rights in violation of Article 8 of the Convention.

3. In addition, he complains under Article 14 of the Convention that the 1991 Act discriminates against certain types of property irrespective of the character or behaviour of the dog in respect of whom charges are formulated and irrespective of any public benefit.

4. Finally, he complains under Article 13 of the Convention that he has no effective domestic remedy.

THE LAW

1. In the first place, the applicant invokes Article 6 para. 1 (Art. 6-1) of the Convention submitting that, since he was not allowed to argue his case and introduce his expert evidence before the Magistrates' Court in October 1992, he did not receive a fair hearing. Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, reads as follows:

> "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. ..."

The Commission notes that the relevant proceedings issued under section 5(4) of the 1991 Act and therefore did not involve the determination of any criminal charge against the applicant. However, even assuming that these proceedings involved the determination of the applicant's civil rights, the Commission considers that this complaint is, in any event, inadmissible for the reasons set out below.

In considering the fairness of proceedings under Article 6 para. 1 (Art. 6-1) of the Convention in light of the refusal by the Magistrates' Court to hear the applicant and his expert, regard must be had to the particular circumstances of the case and the proceedings as a whole (No. 9938/82, Dec. 15.7.86, D.R. 48 p. 21).

The Commission notes that the only matter which could have been at issue during the Magistrates' Court hearing in October 1992 was the breed of the dog. At first glance the refusal to hear the applicant and his expert witness would seem to be harsh.

However, the issue was carefully considered by the High Court. That court found the detailed nature of the solicitor's letter together with its contents (including references to two expert opinions against the position which the applicant adopted the following day before the Magistrates' Court), significant. The High Court also noted the applicant's failure to explain in any way to that court his allegation that he had given no such instructions to his solicitor. It is further noted that no such explanation has been provided to the Commission. Moreover, the High Court noted an inconsistency between the expert evidence previously presented to the Magistrates' Court by the solicitor's letter and that filed on behalf of the applicant before the High Court. The High Court therefore took the view that, in the circumstances, the interests of justice would not be served by sending the matter back for a rehearing.

In view of the above, the Commission considers that nothing has been presented by the applicant to demonstrate that the High Court was wrong in so deciding. Taking the proceedings as a whole, the Commission considers that applicant has not demonstrated that the decision of the Magistrates' Court not to hear him or his expert witness rendered the proceedings unfair within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

Accordingly the Commission finds this complaint of the applicant manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. He also complains that his relationship with his dog came within the scope of his right to respect for his private and family life and that the seizure and destruction of the dog failed to show sufficient respect for those rights in violation of Article 8 (Art. 8) of the Convention.

The Commission recalls that it has previously held that the

keeping of a pet did 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 pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

3. In addition, he complains under Article 14 (Art. 14) of the Convention that the 1991 Act discriminates against certain types of property irrespective of the character or behaviour of the dog in respect of whom charges are formulated and irrespective of any public benefit. Other less draconian measures would, according to the applicant, suffice to achieve the purpose of the legislation.

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 terrier from owners of other dogs which by their behaviour show themselves to be dangerous and that the effective aim of the legislation is to wipe out the breed from the United Kingdom.

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 exemption scheme provided by the 1991 Order together with the relatively uncomplicated requirement to use a muzzle and lead in a public place. 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 within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains under Article 13 (Art. 13) of the Convention that he has no effective domestic remedy.

However, the case-law of the Convention organs establishes 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 his rights and freedoms which warrants a remedy under Article 13 (Art. 13) of the Convention.

It follows that this complaint must also be rejected as being 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)