AS TO THE ADMISSIBILITY OF

Application No. 13997/88
by Jean Elizabeth DOUGLAS
against the United Kingdom

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

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
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 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 October 1987 by Jean Elizabeth DOUGLAS against the United Kingdom and registered on 1 July 1988 under file No. 13997/88;

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 1952 and resident in London. The facts as submitted by the applicant may be summarised as follows.

The applicant's half-sister gave birth to a daughter C. on 16 September 1981. The applicant's half-sister gave C. into the applicant's care soon after birth and took no further part in C.'s upbringing. The applicant already had three sons of her own (B. born on 4 July 1972, L. born on 22 March 1973 and S. born on 18 April 1975). The applicant's sons had been in voluntary care prior to May 1978 when a parental rights resolution was passed by Leeds City Council. Her sons were returned on trial to the applicant's care in July 1982.

On 16 November 1982, the applicant left L., S. and C. in the

care of a Miss T. On 17 November, Miss T. was arrested and was taken to the police station with C., who was collected by the Social Services Department of the London Borough of Lambeth (hereafter the "Social Services"). From 17 to 22 November L., S. and C. were cared for by a temporary carer, while efforts to trace the applicant were unsuccessful. On 22 November 1982 C. was placed in care under Section 2 of the Child Care Act 1982 and placed with short-term foster parents. On 26 November 1982, the applicant contacted the Social Services and on 29 November 1982 C. was returned to the applicant, who also had regained the care of her sons. It later was revealed that on 16 November 1982 the applicant had flown to the West Indies with B. to visit B.'s father who was ill.

On 4 March 1983, the Social Services were informed that the applicant had been arrested in Switzerland in connection with cheque frauds. They also discovered that the applicant had been arrested in Switzerland on a previous occasion in September 1982. On visiting her home, they found that Mr. L., the applicant's co-habitee, was looking after the four children. The Social Services applied to the High Court for C. to be made a ward of court and by order dated 11 March 1983 C. was confirmed as a ward of court and committed to the care of the London Borough of Lambeth.

The Social Services informed the High Court that the applicant had been involved in various criminal activities while she had been living in Leeds which had contributed to her difficulties in caring for her sons and that they were concerned that if the applicant continued to be absent from home for substantial periods of time because of criminal or other activities she would be unable to offer C. appropriate long-term care. They recommended however that pending definite information regarding the applicant's return to the United Kingdom C. remain at the applicant's home in the care of Mr. L. but that they should have the right to remove C. if there were any ground for concern for her welfare. On 27 April 1983, the High Court directed that C. continue to reside in the applicant's home under the care of Mr. L. It also became apparent that the applicant had left owing substantial sums for the phone, gas and electricity, all three services now threatening disconnection. The Social Services came to an agreement with Mr. L. and paid the bills to prevent disconnection.

On 27 August 1983, the applicant returned to the United Kingdom, having been sentenced in Switzerland to a 18 month suspended prison sentence in relation to fraud offences. The applicant was warned by the Social Services that any further disappearances might lead to C. being removed.

On 13 December 1983, the applicant was arrested on suspicion of fraud offences and held in custody pending attendance at Croydon Crown Court. On 14 December 1983, two friends, who had been caring for C. in the applicant's absence, left C. with the Social Services. All four children were placed in emergency care that day. On 15 December 1983 the applicant was released and the children returned to her.

On 1 March 1984, the applicant was remanded in custody on a charge of conspiracy to defraud. The Social Services discovered that the applicant had arranged for a friend Mr. C. to stay at her home with her three sons, while C. was sent to live with Mr. C.'s wife.

On 8 March 1984, the Social Services held a case conference and decided that the applicant had shown herself to be unreliable and unfit to care for C. They proposed to place C. with long-term foster parents with a view to adoption and requested Leeds Social Services to take the three boys back into residential care.

On 15 March 1984, the three boys were collected by a social worker from Leeds. B. succeeded in running away and was sent to Leeds

several days later. All three were placed in a children's home in Leeds.

On 13 April 1984, the applicant was committed for trial. Bail was refused.

On 16 May 1984, the High Court ordered C. to be removed from Mr. and Mrs. C. and placed with short-term foster parents.

On 10 September 1984, the applicant was sentenced to 21 months' imprisonment, inter alia for handling stolen goods and possession of a stolen cheque book and false passport. She was released from prison on parole on 3 May 1985.

On 2 November 1984, C. was placed with a short-term foster mother, who noticed marks of injury on her back.

The matter came back before the High Court on 5 December 1984. In their affidavit of 4 November 1984, the Social Services submitted to the court:

> "The <Social Services> have been very concerned indeed about the disruptions in <C.>'s life caused in some part by the <applicant>'s arrest and imprisonment. They acknowledge that the applicant is the parent figure in <C.>'s life and believe that the applicant again feels strongly that she wishes to undertake <C.>'s care upon her discharge from prison. On balance they now believe subject to anything that may emerge as a result of the doctor's report on <C.>'s bruising, the applicant should be given one final chance to show that she can change her lifestyle in order to provide a stable home for <C.> and accordingly would propose that upon her parole from prison there should be a programme of access to the child leading, if all went well, to her rehabilitation to the applicant after a relatively short introductory period. ... <the Social Services> would regard the <applicant>'s cooperation with them as essential for the success of the rehabilitation. They in turn would offer the <applicant> social work support, reasonable financial help in providing necessaries for C. and help in finding a day nursery place for her. Thus the <Social Services> consider it important to give C. increased stability in her life and to monitor her development which from time to time has given cause for concern. The <Social Services> also believe that the <applicant> would find it easier to stay away from criminal activities if she had a regular job and thus a greater income ...
>
> ... The <Social Services> have reached these recommendations after very lengthy consideration and consider that any rehabilitation of <C.> to the <applicant> should be seen as the last chance and be undertaken only upon stringent conditions. If C. were to come into care again or if she were again left in the care of persons other than the applicant in circumstances such as have arisen in the past they would recommend that an alternative permanent placement be sought for C. forthwith."

Following the order of the High Court, C. was returned to the applicant's care on 17 May 1985 on the applicant's undertaking to reside at all times with C. at her home address or other address as notified to the Social Services and to ensure C.'s regular attendance at a day nursery. The order also gave the Social Services leave to remove C. from the applicant if they considered it necessary on condition they restored the matter to the Court within 48 hours. L., B. and S. returned home in August 1985.

The applicant was charged with an offence relating to use of a

stolen cheque and was tried on 28 January 1986. She received a nine months' prison sentence to be suspended for two years.

On 22 April 1986, the Social Services rang the applicant's home and discovered that the applicant had disappeared, her whereabouts unknown though she had arranged to leave her children in the care of a friend and a neighbour. The applicant was later discovered to have been arrested on her return from Jamaica for possession of cannabis.

On 25 April 1986, the Social Services were granted a seek and restore order from the Court, to secure the custody of C. who had been removed at the applicant's instruction to a place unknown to the Social Services. C. was found on 28 April with the applicant who had been released on 24 April. C. was placed in a children's home.

On 29 April 1986, the High Court granted leave to place C. with short-term foster parents. The applicant was allowed access to C. of 1 1/2 hours per fortnight.

On 29 July 1986, the High Court granted leave for C. to be placed with long-term foster parents.

On 8 September 1986, the applicant was convicted of a drugs offence and sentenced to 27 months' imprisonment.

The applicant was granted home-leave from prison and by order of the Court dated 20 August 1987 was allowed access to C. on 7 September 1987. The Social Services took the view that this visit caused disruption to C. and applied to the High Court for further access to be suspended. This suspension was granted on 8 December 1987.

On 18 and 19 January 1988, the Social Services' application for C. to be placed for adoption and for the applicant's access to be terminated came before the Court. The applicant was present and represented by counsel and solicitor. The judge held that the risks of further imprisonment of the applicant meant that it would not be in the interests of C. to return to the applicant. While the judge recognised the close relationship between the applicant and C., he found that he could not trust her to end her criminal activities and noted that C. had become close to her foster mother. Over a period of 18 months there had been no improvement in the situation of the applicant and the risk of her not being able to provide stability to C. was too high. Since it was not possible to pursue the course of long-term fostering with continued access (since the Social Services stated that no foster parents looking towards adoption would agree to this), the judge granted the Social Services' application. By order, no further access was to be granted to the applicant save one possible further occasion at the discretion of the Social Services.

The applicant was released from prison on 16 March 1988.

COMPLAINTS

The applicant complains that the Social Services lied in the evidence they presented to the Court and that the order placing C. for adoption and terminating access was based on petty reasons. She complains that she and her daughter have been treated inhumanly and wishes to resume care of her daughter. The applicant does not invoke any particular Article of the Convention.

THE LAW

The applicant complains that she has been deprived of the custody of and access to her daughter C. She complains that the

Social Services told lies to the Court and that she and her daughter have been treated inhumanly.

The Commission has examined the applicant's complaints under Article 8 (Art. 8) of the Convention, which provides:

> "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."

While C. is not the applicant's natural daughter, the Commission notes that the applicant assumed the care of C. when she was two weeks old and that until the conclusion of the wardship proceedings, the applicant has been C.'s de facto mother.

The Commission finds that, in accordance with its established case-law, the decision to take C. 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 C. was placed with long-term foster parents with a view to adoption and access terminated following the decision of the High Court on 19 January 1988, when the judge found that the applicant was unable to provide C. with the necessary stability and that it was not in C.'s interest to return to the applicant. The Commission accordingly finds that this decision, made pursuant to the Court's common law jurisdiction, was "in accordance with the law" and was made for the aim of protecting C.'s health and rights.

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 C. in care with a view to adoption and terminating the applicant's access to her were necessary in the interest of C., 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 19 January 1988.

The Commission recalls that the judge acknowledged the close relationship between C. and the applicant but found that the applicant could not be trusted to end her criminal activities and the risks of further imprisonment meant it would not be in C.'s interests to return to the applicant. The judge also found that over the previous 18 months the applicant had made no improvement and the risk of her not being able to provide stability to C. was too high. Since the applicant could not be trusted to care for C. and it was not possible to have long-term fostering with access, the judge ordered that C. be placed for adoption and that access should cease. The Commission finds that these reasons were "relevant" for the decisions in question. It also considers that the judge had "sufficient" reasons for thinking that it was necessary to place C. in care for adoption and to terminate the applicant's access to her.

The Commission also 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) 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 judgment, loc. cit., pp. 28-29, paras. 63-65).

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 under the terms of Article 8 para. 2 (Art. 8-2) of the Convention as being "necessary in a democratic society" for the protection of health and for the protection of the 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)