AS TO THE ADMISSIBILITY OF

Application No. 28846/95
by Richard FOSTER
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 21 July 1995 by Richard FOSTER against the United Kingdom and registered on 4 October 1995 under file No. 28846/95;

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 1972 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 3 June 1993 the applicant was convicted by a Magistrates' Court of having in his possession on 11 October 1992, contrary to section 1(3) of the Dangerous dogs Act 1991, a dog "of the type known as the pit bull terrier". The Magistrates' Court ordered, inter alia, the applicant to pay a fine and that the dog be destroyed.

On appeal, the Crown Court (after a full rehearing) dismissed the applicant's appeal on 2 June 1995. The only matter at issue (as in the Magistrates' Court) was whether the dog was "of the type known as the pit bull terrier" in respect of which issue the applicant and the prosecution called a number of expert witnesses. The Crown Court considered that section 1(1)(a) of the 1991 Act meant that the question to be asked is whether the relevant dog substantially conforms with the accepted characteristics of the pit bull terrier and in this respect approved the breed standards set down by the American Dog Breeders Association ("ADBA"). Having considered the evidence presented by both sides, the court concluded that the applicant had not satisfied the

burden of proof, that the dog substantially complied with the breed standards of the ADBA and that the dog was therefore "of the type known as the pit bull terrier". In so concluding as to the dog's "type", the court took into account evidence presented as to the animal's behaviour.

The dog was seized on the applicant being charged and remains in police custody to date pending the outcome of the present application.

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.

Dogs generally have breed standards which are laid down and recognised by different associations of dog breeders. The English Kennel Club has no standards in relation to pit bull terriers because of the long period when those dogs were not bred in the United Kingdom. The United States, on the other hand, has two associations setting down such standards - the American Dog Breeders Association ("ADBA") and the United Kennel Club ("UKC").

The ADBA exists for pit bull terriers alone, its standards are widely used, it is concerned to take into account fighting standards and the dogs imported into the United Kingdom in the 1970's were registered with the ADBA. Its standards mainly relate to the physical characteristics of a pit bull terrier but also refer to the dog's "gameness and aggressiveness". The UKC provides standards for many breeds of dog registered with it (including pit bull terriers) but is mainly concerned with show dogs.

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).

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 for adult dogs and prior to the 30 November 1991 for puppies), 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 about the presumption of fact contained in section 5(5) of the 1991 Act arguing that it is in violation of Article 6 para. 2 of the Convention.

2. He also complains that the condemnation of a category of dog, on the basis of physical appearance and apparent characteristics alone without accepting evidence as to past good behaviour, violates the right to a fair trial guaranteed by Article 6 para. 1 of the Convention.

3. He also complains that he has been deprived of his basic right to have a dog as a pet in violation of his right to respect for his private and family life in violation of Article 8 of the Convention.

4. The applicant further claims that the 1991 Act has denied his peaceful enjoyment of his possessions contrary to Article 1 of Protocol 1 as the measures in question went beyond any fair view of the public interest in the control of the use of property.

5. In addition, he complains under Article 14 of the Convention that the 1991 Act discriminates against a certain type of dog irrespective of the character or behaviour of the dog in respect of whom charges are formulated.

6. Finally, he complains under Article 13 of the Convention that he has no effective domestic remedy because there is no option, other than a destruction order, available to a court having convicted an owner under section 1(3) of the 1991 Act.

THE LAW

1. In the first place, the applicant submits that the practical effect of the presumption of fact contained in section 5(5) of the 1991 Act, when operated in conjunction with, in particular, sections 1(1)(a) and 1(4)) of the 1991 Act, is an inevitable finding against the applicant and the mandatory destruction of the dog. As such the presumption is in violation of Article 6 para. 2 (Art. 6-2) of the Convention, which Article reads as follows:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Commission recalls that the criteria to be applied in determining whether proceedings involve the determination of a criminal charge are the qualification of the offence in domestic law, the very nature of the offence together with the nature and degree of severity of the penalty which the accused risks incurring (see, for example, No. 13877/88, Dec. 17.5.90, D.R. 65 p. 279). Applying these criteria and in view, in particular, of the sanction set out in section 1(7) of the 1991 Act for a contravention of section 1(3) of that Act, the Commission considers that the proceedings against the applicant constituted the determination of a criminal charge.

As regards the complaint under Article 6 para. 2 (Art. 6-2) of the Convention, the Commission recalls that the Court, in the Salabiaku judgment and more recently in the Pham Hoang judgment, stated that the Convention does not prohibit presumptions of fact or law in principle, but does require Contracting States to remain within certain reasonable limits as regards criminal law which limits take into account the importance of what is at stake and maintain the rights of the defence. The Court, in the above-mentioned judgments, also went on to consider whether the application of the relevant presumptions was compatible

with the presumption of innocence (Eur. Court H.R., Salabiaku judgment of 7 October 1988, Series A no. 141-A, pp. 14-18, paras. 26-30 and Pham Hoang judgment of 25 September 1992, Series A no. 243, pp. 21-22, para. 33).

In the present case, the Commission also recalls that the presumption contained in section 5(5) of the 1991 Act is one as to fact namely, it is presumed that a dog is "of the type known as the pit bull terrier".

The Commission notes what was at stake for the applicant namely, a possible criminal conviction together with a potential penalty of, inter alia, six months imprisonment and the destruction of his dog. However, the Commission finds that it is significant that section 5(5) of the 1991 Act expressly provides an opportunity to the defendant to adduce evidence at the initial hearing as to a dog's breeding and that the applicant did this before the Magistrates' Court and the Crown Court. Indeed the sole issue of substance throughout the domestic proceedings was whether the dog in question was "of the type known as the pit bull terrier". Detailed evidence was submitted by the prosecution and the defence as to the dog's breeding before the courts concluded that the ADBA standards, being the most rigorous standards available, could be utilised, that the dog substantially complied with those standards and that the applicant had therefore not, on the balance of probabilities, established that his dog was not of a type known as a pit bull terrier.

In such circumstances, the Commission does not consider that the presumption as to fact contained in section 5(5) of the 1991 Act led to an "inevitable" result as claimed. Furthermore, the Commission finds that the presumption in question falls within reasonable limits, even in light of what was at stake for the applicant, given the opportunity expressly provided to the defence to rebut that presumption and that section 5(5) of the 1991 Act was applied in a manner compatible with the presumption of innocence. Accordingly, the Commission concludes that the applicant's complaint under Article 6 para. 2 (Art. 6-2) of the Convention is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. He further complains that the condemnation of a category of dog, on the basis of their physical appearance and apparent characteristics alone without accepting evidence as to past good behaviour, together with the lack of a sanction on conviction other than a destruction order violate the right to a fair trial set out in Article 6 para. 1 (Art. 6-1) of the Convention.

Having regard to the nature of these submissions, the Commission considers that they are more properly considered under Article 1 of Protocol 1 (P1-1), this complaint essentially being a grievance with the provisions of the 1991 Act itself and there being no suggestion (apart from the issue considered at 1. above) that the hearings themselves were procedurally unfair.

3. The applicant further argues that the deprivation of his dog constitutes a lack of respect for his private and family life guaranteed by Article 8 (Art. 8) of the Convention.

As to whether the applicant's complaint is within the scope of Article 8 (Art. 8) of the Convention, the Commission recalls its previous case-law in which it held that the keeping of a pet does 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.

4. The applicant claims that the 1991 Act has denied his peaceful enjoyment of his possessions contrary to Article 1 of Protocol 1 (P1-1) as the measures in question went beyond any fair view of the public interest in the control of the use of property.

Article 1 of Protocol 1 (P1-1), insofar as relevant, reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The Commission recalls that the applicant's dog was impounded since he was charged, remains so to date and is the subject of a destruction order and considers that the applicant was deprived of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol 1 (P1-1).

In order to be so justified, it must be shown that the deprivation was in accordance with the conditions provided for by law and in the public interest. Furthermore, not only must the aim of the deprivation of property be in the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (cf., for example, Eur. Court H.R. Holy Monasteries judgment of 9 December 1994, Series A no. 301-A, para. 70). This implies that a fair balance must be struck between the demands of the general interests of the community and the requirement to protect the individual's fundamental rights, which balance would not be found if the individual was found to have borne an excessive burden (cf. Eur. Court H.R., Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, pp. 26-28, paras. 69-73).

(a) Subject to the conditions provided for by law

The Commission recalls that the term "law" in the Convention refers not only to compliance with the domestic law but also to the quality of that law requiring it to be compatible with the rule of law so that, inter alia, the law in question must not be arbitrary and must be formulated with sufficient precision to enable citizens to regulate their conduct (Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 41, para. 67 and the Sunday Times judgment of 26 April 1979, Series A no. 20, p. 31, para. 49). The Commission, having examined the applicant's submissions, finds no evidence that the prosecution of the applicant was other than in accordance with the 1991 Act or that his prosecution or conviction was arbitrary in its effect.

However, the applicant submits that the phrase "any dog of the type known as the pit bull terrier" is vague and that definitively deciding on such an issue is notoriously difficult. In this respect the Commission does not consider that, in view of the availability of objective standards by which various characteristics of a dog can be assessed to establish its identity, that the formulation of the section 1(1)(a) of the 1991 Act lacks sufficient precision to have enabled the applicant to regulate his conduct as regards his dog to avoid prosecution under section 1(3) of the 1991 Act. The Commission is also cognisant, in this respect, of the exemption scheme provided by the 1991 Order, by which the applicant could have appropriately regulated his conduct, if he was in any doubt as to his dog's breeding.

(b) Public interest

The Commission considers that it is clear that the provisions of the 1991 Act, which applied in the applicant's case, operate in the interests of public safety.

(c) Proportionality of the deprivation

In the context of his complaint under Article 6 para. 1 (Art. 6-1) of the Convention, the applicant points out that the 1991 Act denounces a breed rather than a particular dog's dangerous behaviour (section 1(1)(a)). He also disputes the necessity of the mandatory destruction order (section 4) in that a number of other options could have been available by the 1991 Act. For example, he points out that the courts cannot allow a period of probation, order an alternative to a destruction of the dog or allow late registration in order to qualify for the exemption under the 1991 Order. According to the applicant therefore the practical effect of the 1991 Act is that, if the owner misses the deadline for registration and thus qualification for the exemption scheme, the possession or ownership of such a dog is in itself unlawful and its destruction is mandatory.

On the one hand, the Commission accepts that the conviction based on breed rather than past behaviour and the consequent mandatory destruction order, being provisions ultimately aimed at eradicating pit bull terriers as a breed from the United Kingdom, are draconian measures.

However and on the other hand, the Commission is cognisant of the fact that the pit bull terrier breed was developed as a fighting animal which, prior to the introduction of the 1991 Act, was known to have attacked persons in the United Kingdom causing much public concern. In addition, the Commission notes that a full exemption scheme was provided for by the 1991 Order which allowed persons such as the applicant, who had fulfilled certain conditions prior to a certain date, to retain possession of their dogs subject to the requirement that they be on a lead and muzzled in public places.

In these circumstances, the Commission considers that the provisions of the 1991 Act referred to by the applicant demonstrate a reasonable relationship of proportionality between the means employed and the aim sought to be realised in that a fair balance was struck between the importance of ensuring the safety of the public and the requirement to protect the applicant's rights under Article 1 of Protocol 1 (P1-1).

Therefore the Commission concludes that this complaint of the applicant is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant complains under Article 14 (Art. 14) of the Convention that the 1991 Act discriminates against a certain breed of dog irrespective of the character or behaviour of the dog in question. 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) of the Convention 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. 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 existence of the exemption scheme in the 1991 Order together with the relatively uncomplicated requirement to use a muzzle and lead in public. 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 pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicant complains under Article 13 (Art. 13) of the Convention that he has no effective domestic remedy. In this respect, he points to the mandatory nature of the destruction order pursuant to conviction under section 1(3) of the 1991 Act and the inability of the courts to make any alternative orders upon convicting the owner of a relevant dog.

Insofar as the applicant claims that there was no domestic remedy in respect of his complaints that the provisions of the relevant legislation do not comply with the Convention provisions and Protocols, the Commission recalls that Article 13 (Art. 13) of the Convention does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before the national authority on the grounds of being contrary to the Convention (Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98, p. 47, para. 85).

Insofar as the applicant complains about the consequences for him of the application of the legislation, the Commission recalls 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 by the application of the legislation in his case, which warrants a remedy under Article 13 (Art. 13) of the Convention.

In such circumstances the Commission considers this complaint 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)