AS TO THE ADMISSIBILITY OF

Application No. 28485/95
by Gordon GLASS
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 16 October 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ

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 28 September 1994 by Gordon GLASS against the United Kingdom and registered on 9 September 1995 under file No. 28485/95

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 applicant is a British citizen born in 1949. He lives in Richmond, in Surrey. The facts of the application, as submitted by the applicant, may be summarised as follows.

The specific circumstances of the case

The applicant bought a house in Richmond in about 1986. At the time, noise from Heathrow Airport, about 5 - 6 miles away, was not a problem.

Over the years, there was a considerable increase in flights, and in particular in night flights. The applicant ascribes the increase to a series of administrative decisions on the part of various authorities, and to a growth in air traffic which has affected flight patterns. The night is generally free of aircraft noise for about 5 hours, although the period has been as short as 2 hours. After the first aircraft, at about 4.30 a.m., there is a flight approximately every 15 - 20 minutes, and from 5.50 a.m. there is a flight approximately every 90 seconds. This frequency continues for most of the day and possibly to around 1.00 a.m. the next morning.

The applicant has submitted the results of noise measurements at his home which show noise levels of some 75 - 80 dBA when aircraft are

on their normal path. The aircraft overfly the applicant's house at about 200m.

In 1995 the applicant moved to what he hoped would be a quieter part of Richmond, but the flight patterns changed again, and the applicant's new house, too, was subject to flights all day long.

The applicant entered into correspondence with his local authority in connection with a decision to suspend the alternation of runways at Heathrow whilst repair works were carried out at other runways. The effect of this suspension was to increase traffic passing over the applicant's house for a period of some six weeks.

On 13 July 1995, the local authority informed the applicant that because, in the light of Section 76 (1) of the Civil Aviation Act 1982, the flight of aircraft could not constitute a nuisance, the council could not exercise their statutory powers under the Environmental Protection Act 1990 or other legislation.

On 24 July 1995 the applicant applied to the local magistrates' court for a nuisance order against the Civil Aviation Authority under the Environmental Protection Act 1990. The magistrates' clerk replied on 25 July 1995 that "Redress [could] not be granted in view of the exception contained in Section 79 (1) (6) of the [Environmental Protection Act] 1990 ...".

The relevant domestic law

Section 76 (1) of the Civil Aviation Act 1982 provides, so far as relevant, as follows:

> "No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which, having regard to wind, weather and all the circumstances of the case is reasonable, or the ordinary incidents of such flights ..."

Section 79 (1) of the Environmental Protection Act 1990 defines "statutory nuisances", and imposes a duty on local authorities to inspect their areas and to detect and deal with statutory nuisances. Section 79 (1) (g) includes "noise emitted from premises so as to be prejudicial to health or a nuisance" within the definition. By virtue of Section 79 (6), Section 79 (1) (g) "does not apply to noise caused by aircraft other than model aircraft".

Section 82 of the Environmental Protection Act 1990 gives magistrates power to act on a complaint from any person aggrieved by the existence of a statutory nuisance.

COMPLAINTS

The applicant complains that the noise generated at his home by aircraft from Heathrow airport, and his inability to do anything about it, violate the Convention. He refers specifically to Articles 6, 8 and 13 of the Convention, and to Article 1 of Protocol No. 1.

THE LAW

1. The applicant alleges violations of the Convention by virtue of the noise created at his house by aircraft using Heathrow airport.

The Commission recalls that the Convention organs have considered questions arising from aircraft noise on several occasions (see, for example, Arrondelle v. the United Kingdom, No. 7889/77, Dec. 15.7.80 and Rep. 13.5.83, D.R. 26 p. 5; Baggs v. the United Kingdom, No. 9310/81, Dec. 16.10.85, D.R. 44 p. 13 and Rep. 8.7.87, D.R. 52 p. 29; Eur. Court H.R., Powell and Rayner v. the United Kingdom

judgment of 21 February 1990, Series A no. 172 and the Commission's admissibility decision in the Rayner case, No. 9310/81, Dec. 16.7.86, D.R. 47 p. 5). Substantive issues under Article 8 (Art. 8) of the Convention and Article 1 of Protocol No. 1 (P1-1) to the Convention have been declared admissible only twice, in the cases of Arrondelle and Baggs. Both of those cases resulted in a friendly settlement, but the Commission notes that each of those applicants was considerably closer to the respective airport (Gatwick in the case of Arrondelle; Heathrow in the case of Baggs) than the present applicant. Moreover, from the actual noise levels submitted by the applicant, it appears that a figure of 80 dBA was not exceeded at his house in 1994. Equivalent figures in the case of Rayner were 87 dBA for aircraft landing, and 86 dBA for aircraft taking off (D.R. 47 p. 7). The applicant has not submitted figures for the house he bought in 1995.

The Commission finds nothing in the applicant's submissions which could indicate that he suffers a degree of discomfort comparable to that of the applicants in the cases of Arondelle and Baggs. Indeed, his position is probably somewhat better than that of the applicants in the cases of Powell and Rayner.

The Commission recalls the desirability of consistency in case-law (see Eur. Court HR, Cossey v. the United Kingdom judgment of 27 September 1990, Series A no. 184, p. 14, para. 35), and finds 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 complains about his inability to bring any form of action to remedy the noise. He alleges violations of Article 13 (Art. 13) of the Convention in this respect.

To the extent that the applicant alleges a violation of Article 13 in connection with Article 8 (Art. 13+8) of the Convention and Article 1 of Protocol No. 1 (P1-1), the Commission recalls that a complaint may only be made under Article 13 (Art. 13) in connection with a substantive claim which is "arguable" (see, for example, the above-mentioned Powell and Rayner judgment, p. 14, para. 33). The Commission has found that the applicant's complaints under Article 8 (Art. 8) of the Convention and Article 1 of Protocol No. 1 (P1-1) are manifestly ill-founded. It finds that those claims cannot be said to be "arguable" within the meaning of the Convention case-law.

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.

3. Finally, the applicant alleges a violation of Article 6 (Art. 6) of the Convention in that he is denied the possibility of putting to the courts his complaints about noise caused by aircraft. Article 6 (Art. 6) provides, so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to give notice of this complaint to the respondent Government.

For these reasons, the Commission, by a majority,

DECIDES TO ADJOURN the examination of the applicant's complaint that he is denied access to court, and

DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber