AS TO THE ADMISSIBILITY OF

Application No. 13887/88
by Diana GRAEME
against the United Kingdom

The European Commission of Human Rights sitting in private on 5 February 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
J. CAMPINOS
Mrs. G.H. THUNE
Sir Basil HALL
M. F. MARTINEZ
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 25 June 1987 by Diana GRAEME against the United Kingdom and registered on 26 May 1988 under file No. 13887/88;

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 1955 and resident in Manchester. She is represented before the Commission by her second husband. The case concerns the special educational needs of one of the applicant's sons, born in 1973, by a first marriage, and who became the second husband's step-child. (The child's natural father has played no part in the child's life since 1978.)

The facts of the present case, as submitted by the applicant and which may be deduced from official documents lodged with the application, may be summarised as follows:

The boy started at a primary school in September 1978 when he was five. At a very early age it was noted by the school that he was backward, and special schooling was suggested even at that stage. In January 1979 the family moved to Bolton and it became clear that the minor was intellectually and linguistically retarded. The local education authority (LEA) recommended that he should attend a special school. However, both parents (ie the mother and step-father) were strongly opposed to this. They thought that it was most important for the boy's upbringing that he should go to a normal school and be

educated among ordinary children. But his educational problems were unfortunately combined with physical problems. His growth is retarded, and he is of very short stature for his age. He suffers from a compulsive thirst and episodes of incontinence. He is also an epileptic and has had convulsions since he was a baby, but this condition is now controlled by medication. There is some controversy as to the cause of the child's retarded growth. Certain medical opinion attributes it to an edeopathic growth hormone deficiency for which little treatment is available from the National Health Service; other opinion attributes it to long-term emotional and psychological causes.

In September 1980 the child moved to a State primary school. He was then seven, but he had to be placed with five-year-olds. His stunted growth was also becoming apparent. From February until the autumn of 1982 he was away from the school because of an acute attack of ringworm. He returned in October 1982, but his attendance was only sporadic, and he finally left in June 1983. In the autumn of 1983 he started at a private fee-paying school, a normal school for children up to 11, but because of his difficulties he was placed in a class for six-year-olds. At the end of 1983, when he was ten, his speech therapist stated that his verbal comprehension was delayed at a four-to-five-year-old level. In April 1984 he had to leave that school because his parents could no longer afford the fees, which they had met by making considerable financial sacrifices.

The LEA then decided to carry out the statutory assessment procedure under the Education Act 1981 with a view to placing him in a suitable special school. Because of their opposition to his going to such a school the parents refused to cooperate and embarked on a course of conduct described by the Court of Appeal as being designed to frustrate this assessment procedure.

In July 1985 the boy was placed in the remedial unit of a State comprehensive school. In August 1985 the LEA started care proceedings in the Magistrates' Court seeking an interim care order under the Children and Young Persons Act 1969. By initiating these proceedings the LEA were not intending to remove the minor from the care of his parents. The object of the care proceedings was to facilitate a proper assessment of the child's needs. The response of the parents was to issue wardship proceedings on 29 August 1985. This resulted in the care proceedings being adjourned sine die. The child was made a ward of court. In addition to issuing wardship proceedings the step-father (hereafter referred to as the father) made an application to the Secretary of State for Education seeking directions with regard to complaints made on 21 September 1983 and 20 February 1984 about the conduct of the LEA. He wanted the Secretary of State to make use of his powers under sections 68 and 99 of the Education Act 1944 and to give directions to the local authority.

Originally the Secretary of State was a defendant in the wardship proceedings and the LEA were not joined as a party. However, the LEA intervened and on 1 November 1985 an order was made as a result of which the Secretary of State ceased to be a party. The father appealed against that order to Bush J and then to the Court of Appeal. Both appeals were dismissed.

In the wardship proceedings the parents sought care and control of the minor and a direction that he should continue to be educated at the local State comprehensive school, or such other school as the Secretary of State for Education should direct. The LEA sought a direction that the minor should be examined by a medical practitioner and an educational psychologist to enable them to make an assessment of the minor's needs under the Education Act 1981.

In December 1985 the father was having to take so much time off from his work as a supply teacher to go to the boy's school to

deal with reports that the child was suffering from bouts of sickness that he lost his job. However, despite his efforts, the child was suspended from the school in February 1986 because the school felt they could no longer cope with his medical and behavioural problems. From February until December 1986 he received no school education.

The Official Solicitor was appointed the child's guardian ad litem and he set about obtaining expert medical reports for the continuing wardship proceedings. The wardship hearing was held before Mr. Justice Waite of the High Court Family Division on 18 December 1986. The Official Solicitor reported to the Judge that in his opinion the boy's best interests would be served by his attending a special residential school. He made recommendations which included the minor being committed to the care of the LEA pursuant to section 7(2) of the Family Law Reform Act 1969 designed to ensure that the child could go to an appropriate school and that his care and education would not be interfered with by his parents.

While accepting that their son might need special schooling, the parents were strongly opposed to his going to a boarding school. Waite J therefore regarded the choices before the court as to the minor's education as being either that he should go to a special day school or a special boarding school. He found that there was a special day school in the area of an adjoining local authority some five to six miles from the parents' home where the minor could probably go. The alternative boarding school choice was limited to two Rudolph Steiner schools in the south of England, a long distance from Bolton. The judge noted that the applicant's family, consisting of the two boys by her first marriage and two girls by her second marriage, was united, boisterous and devoted. However, having weighed up the conflicting considerations, Waite J came to the conclusion that the balance of advantage for the minor (whose welfare and interests were paramount) lay in directing that he be placed as soon as possible in a suitable residential boarding school. The judge appreciated that the parents would regard his decision as a bitter blow and he expressed the hope that they would not continue to feel "as though they inhabit a world in which every man's hand is against them and their child" but that instead:

> "They should see themselves rather as one of those couples, of whom there are very many within our society, who share with them the special agonies, as well as the special privileges, which accompany responsibility for the upbringing of a handicapped child."

In that connection the judge went on to point out that the child had not thrived or grown as he should within their loving and devoted home, although the reason for this was not known. He said that before it is too late the child therefore deserved the chance of seeing whether he can benefit from another kind of care in different surroundings and with children who share some of his own problems.

In accordance with his conclusions and the recommendations of the Official Solicitor, the judge ordered (i) that the minor should remain a ward, (ii) that he should be placed in the care of the LEA pursuant to section 7(2) of the 1969 Act, (iii) that the LEA should make the necessary arrangements for the minor to attend a suitable school, such school to be approved by one of the consultant medical experts and the Official Solicitor, (iv) that pending such placement the minor should remain in the care and control of his parents, and (v) that the LEA, at their discretion, should arrange access by the parents in the school holidays and other periods of leave.

In the course of the hearing the LEA had made it clear that, in connection with their powers under the Education Acts, they were willing to accept the judge's conclusions in the wardship proceedings concerning the best way of providing for the minor's educational

needs. This was strongly challenged by the father as an impermissible abdication of their statutory duties and the parents refused to cooperate.

They promptly, in person, lodged a notice of appeal to the Court of Appeal. In addition, they made an application to the judge under Ord 58, r 6(2)(b) of the Rules of the Supreme Court to set aside and discharge the judgment of 18 December 1986. That application was heard by the judge on 17 February 1987 and dismissed on the following day as misconceived.

Pending the appeal hearing and without reference to the LEA, the child had been sent by the parents to another private school in an attempt to demonstrate that no special schooling was required. However, the LEA had meanwhile managed to find him a place at the Sheiling School at Ringwood in Hampshire, one of the Rudolph Steiner Camphill Schools which the consultant had described as "outstanding" in the education of the handicapped. In addition, and again without reference to anyone, the parents had arranged for the minor to be seen by another consultant, the head of the department of pediatrics at the University of Sheffield. In a report dated 4 February 1987 this expert indicated that the boy's short stature could possibly be caused by edeopathic growth hormone deficiency. He expressed the view that a six-month clinical trial of growth hormone therapy was justified. Some of the money needed to meet the cost of the trial had been raised as a result of a public appeal which had been supported by the media. According to the father, the consultant also advised him that no major step concerning the child's education should be taken until the results of the growth hormone treatment were available. However, the consultant had no knowledge of the views which had been expressed by the medical experts in the wardship proceedings, because the father had thought all aspects of these proceedings had to be kept confidential. Other medical expertise found little evidence of growth hormone deficiency.

On 17 February 1987 Waite J ordered, in view of the parents' lack of cooperation, that the boy be taken by a social worker to Great Ormond Street Children's Hospital on 23 February 1987 for further medical tests and then to the Sheiling School the following day. The parents reluctantly cooperated, whilst applying for judicial review on 17 February 1987 which proceedings were adjourned by the High Court. The parents were thereby seeking an order of prohibition to prevent the child's admission to the school. The parents also pursued proceedings for damages against the school governors.

The LEA in the meantime decided to proceed with the assessment of the child's educational needs under section 5 of the Education Act 1981 whilst he was at the Sheiling School. The parents contended that this statutory assessment could only properly be performed in the natural setting of the family home.

The Court of Appeal took all these elements into account on 19 May 1987 and upheld the High Court decisions in the light of the unusual circumstances of the case and adamant lack of cooperation of the parents, who otherwise could only be described as "impeccable". The LEA had put forward generous proposals for the parents' access. If advantage were taken of these arrangements by the parents, this would be an important element in the High Court's future review of the boy's circumstances and whether the LEA care order should be maintained. The Court of Appeal expressed the hope that the parents would cease all further vexatious litigation concerning the child.

The Appeal Committee of the House of Lords dismissed the parents' petition for leave to appeal on 11 November 1987.

The applicant alleged that the Sheiling (Rudolph Steiner) School which her son was obliged to attend was not a special school

and discouraged, inter alia, family and Christian life, withholding all the children from their families at Christmas, Easter and other festivals, and refusing to allow her son to celebrate his religion as a member of a recognised Christian church community. Its teachers were allegedly unqualified and the boy was allegedly sexually abused by one of them, for which no protection was afforded by the Official Solicitor. The applicant claimed to have been denied access to the boy from May until December 1987, and that he was forcibly taken from her by the police, acting on a High Court order, back to the school on 15 May 1987, when the parents attempted to keep the boy at home after the alleged sexual abuse.

The Government have responded to these allegations as follows: As regards Christian education at the Sheiling School it was stated that the children at that school are not denied access to education in the Christian religion. On the contrary, the School is based on Christian principles which are fundamental to the daily life. Children and students take part in the Sunday non-denominational services in the School Chapel and Saturday evening is a bible evening when a time is set aside for understanding the Bible reading for the week.

As regards celebration of the Christian festivals, this is the central focus around which the life of the School revolves, through the active involvement of the whole community in the preparation of plays, pageants and concerts. There is great preparation for the main festivals of Easter and Christmas and the school term ends only after these festivals have taken place. Parents are quite free to take their children home before if they wish, but most children prefer to join in the celebrations with their friends and the whole community. The applicant's son stayed at the school for the Easter festival in 1987 as he was a Ward of Court and it was the wish of the LEA, who decided questions of access, that he remain at school until the end of term. The child would also have stayed at school for the Christmas celebrations of 1987 in accordance with the wishes of the LEA if his father had not removed him without the prior knowledge of the School or his guardian. After this episode he was dismissed from the school.

The applicant stated that the child was not removed by the father but absconded from the School. To avoid negative publicity about their lack of supervision in child-care and education the School asked for his removal in January 1988. Proceedings brought by the applicant in the local county court were apparently dismissed on the basis that only the child could take proceedings about his religious education if there were any right to such an education under United Kingdom law.

As regards the allegation of sexual abuse by a teacher the Government have submitted that there was no evidence whatsoever of this. The allegation was made to the Greater Manchester Police on 7 May 1987 by the applicant's husband. The Greater Manchester Police informed the local police at Ferndown in Dorset. A full investigation was carried out and the police file was closed as they were satisfied that the allegations were completely without foundation.

According to the School's Medical Officer the boy suffered from paraphimosis (a tight foreskin) for which he received treatment in a local hospital. It would appear that some gesture from the boy's teacher in connection with this condition was misinterpreted by the applicant as a sexual assault.

The Official Solicitor also carried out an independent investigation of the allegation. The applicant alleged that the latter, and particularly his staff, are incompetent and that the police investigation was closed to avoid, inter alia, embarrassing the Official Solicitor and his choice of school for the boy.

It seems that access was further denied to the parents for two months by a High Court Family Division order dated 18 January 1988. The applicant also appears to have instituted proceedings against the Official Solicitor for his handling of her son's interests.

COMPLAINTS

The applicant complains that she is the victim of a breach of Article 2 of Protocol No. 1 to the Convention because her son was not educated in conformity with her religious and philosophical convictions relating to:

a) the education of her son with ordinary children;

b) his education in a private, independent school of her choice;

c) his education in a denominational Christian school which supports family life with the natural parents;

d) an education in which her child would learn and celebrate religion.

The applicant also alleges that the public authorities have unjustifiably interfered with her Article 8 rights because of her religious and philosophical beliefs and have breached Article 9 of the Convention in allegedly preventing her son's practice of religion and observing the major religious festivals at home. The applicant finally complains that the wardship proceedings denied her a fair hearing of her civil rights before an independent and impartial tribunal, contrary to Article 6 of the Convention.

THE LAW

1. The applicant complains that her son has not been educated in accordance with her religious and philosophical convictions regarding integrated schooling for disabled children, the choice of private education and Christianity.

Article 2 of Protocol No. 1 (P1-2) to the Convention provides as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

As regards the question of integrated education for disabled children in a private school of one's choice, the Commission leaves open the question whether the applicant's disagreement with the education authorities about the appropriate school for her son could be said to be based on deep-founded philosophical convictions rather than a difference of view as to the best way of providing the boy with an education. Even assuming that the applicant's philosophical convictions may be at issue in this part of the present case, the Commission refers to the dominant character of the child's right to education in Article 2 of Protocol No. 1 (P1-2) to the Convention (cf. Eur. Court H.R., Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, p. 25, para. 52).

The second sentence of Article 2 (Art. 2) requires the State in exercising any educational function to ensure that the education and teaching of a child is as far as possible in conformity with the parents' religious and philosophical convictions. This requirement extends not only to the matter taught but to other aspects of the

educational function (cf. Eur. Court H.R., Campbell and Cosans judgment of 25 February 1982, Series A no. 48, p. 14, para. 33). It does not, however, require the State to provide special facilities to accommodate particular convictions though it may affect the use of existing facilities (No. 7782/77, Dec. 2.5.78, D.R. 14 p. 179). In this context reference should be made to the United Kingdom Government's reservation to this provision, accepting the second sentence of Article 2 (Art. 2) "only so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure".

The Commission notes that, in the same vein as the aforementioned reservation, section 2 of the Education Act 1981 provides that a child with special educational needs should be educated in an ordinary school if that is compatible with the special education the child requires, the provision of efficient education for other children at the school and the efficient use of resources.

The Commission observes that there is an increasing body of opinion which holds that, whenever possible, disabled children should be brought up with normal children of their own age. The Commission recognises, however, that this policy cannot apply to all handicapped children. It further recognises that there must be a wide measure of discretion left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of disabled children generally. While these authorities must place weight on parental convictions, it cannot be said that the second sentence of Article 2 (Art. 2) requires the placing of a child with severe development delay in a private school for able children rather than in an available place in a special school for disabled children.

As regards the question of religious education, the Commission again refers to the Court's judgment in the Kjeldsen case in which it recognised that Article 2 of Protocol No. 1 (P1-2), for practical reasons, could not require that educational facilities provided by the State cater for all parental philosophical or religious convictions. Such facilities should only ensure that there is no indoctrination of pupils which might be considered as not respecting parents' views (ibid. para. 53).

In the present case the Commission notes that the applicant has forfeited much of her parental freedom of choice in having her son made a Ward of Court, with the appointment of a guardian ad litem, the Official Solicitor. Nevertheless, in these wardship proceedings her views have been heard and account has been taken of her convictions. However, the interests of her son were given precedence by the courts and it was thought to be in his best interests to place him at the Steiner School away from his family. Access facilities were granted to the applicant. The School had a good reputation for educating handicapped children and it followed Christian teachings. There seems to be no foundation in the allegation that the boy was mistreated in any way at the School. In these circumstances, the Commission finds that the courts and education authorities have respected the applicant's views as far as they were consistent with her son's right to have an as effective education as possible. The Commission concludes that the present case does not disclose any appearance of a violation of Article 2 of Protocol No. 1 (P1-2) to the Convention. It follows that this aspect of the application is manifestly ill-founded, within the meaning of Article 27 para. 2 of (Art. 27-2) the Convention.

2. The applicant has also complained that the various authorities violated her right to respect for family life and her freedom of religion because of the alleged failure to provide a Christian education for her son in accordance with her religious and philosophical convictions.

Article 8 (Art. 8) of the Convention guarantees, inter alia, the right to respect for family life and Article 9 (Art. 9) of the Convention guarantees freedom of thought, conscience and religion. Both provisions envisage certain justified interferences with those rights, provided that they are in accordance with the law, or prescribed by law, and necessary in a democratic society for the protection of certain legitimate interests, such as the protection of health or morals, or the rights and freedoms of others. However, in view of the factual considerations noted above concerning the educational issues raised in the present case, the Commission finds that, even assuming that there has been an interference with the applicant's rights under Articles 8 and 9 (Art. 8, 9) of the Convention, it was justified as being in accordance with the law, or prescribed by law, and necessary in a democratic society for the protection of the rights of others, namely the son's right to a suitable education for his disabilities. The Commission concludes that this complaint is also manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Finally the applicant complained that in the wardship proceedings she did not have a fair hearing of her civil rights before an independent and impartial tribunal, contrary to Article 6 para. 1 (Art. 6-1) of the Convention. However, the Commission finds no evidence whatsoever in the case-file which could substantiate such an allegation. On the contrary, it appears from the file that all the courts hearing the applicant's case, in particular the High Court and the Court of Appeal, gave thorough consideration to the applicant's claims and submissions and showed no bias. An adverse finding is not in itself evidence of partiality or lack of independence. Accordingly, the Commission concludes that this aspect of the case is similarly 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)