AS TO THE ADMISSIBILITY OF

Application No. 29576/95
by David IRVINE
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 September 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIČ
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

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 16 March 1995 by David IRVINE against the United Kingdom and registered on 20 December 1995 under file No. 29576/95;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 11 July 1997 and the observations in reply submitted by the applicant on 13 January 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1962. He lives in Cleveland and is unemployed. Before the Commission he is represented by Messrs Shoosmiths & Harrison, solicitors, The Lakes, Northampton.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Particular circumstances of the case

On 18 September 1990 the applicant, who at the time was working as a labourer/welder, suffered an accident at work in which he sustained serious injuries to his back. The applicant's medical report described the applicant's injuries as follows:

"... [the applicant] sustained a blow to his low back and probably a flexion/rotational strain to his lumbar region. It is also likely that he sustained a similar, although less severe, force to his cervical spine. Considering the mechanism of injury and [the] subsequent clinical course, ... it is likely that he sustained a degree of tearing of the soft tissue supporting structures of his lumbar spine in particular, the paravertebral muscles ... The natural history of this type of injury is for the symptoms to resolve with time. Symptoms, however, characteristically persist in some degree for a period of, on average, two years during which the torn soft tissues heal by scar formation and this scar tissue subsequently matures ..."

After the accident the applicant was paid statutory sick pay through his employers for the periods from 17 to 19 October 1990 and from 5 December 1990 to 18 June 1991. He further applied to the Department of Health and Social Security for sickness benefit, reduced earnings allowance and invalidity benefit. He was granted sickness benefit from 19 June to 31 December 1991, reduced earnings allowance from 2 January 1991 to 3 March 1992 and invalidity benefit from 1 January 1992 to 24 May 1994. These payments constituted recoverable benefits under the Compensation Recovery Scheme ("the Scheme").

The applicant issued proceedings for damages for personal injury and loss occasioned by negligence against the Chiutone Ltd., the company for which he was working at the time of the accident. By instituting this action, the applicant sought to recover special damages, i.e. damages for loss of earnings and compensation for other quantifiable losses occasioned by the accident. He further sought to recover general damages, to compensate for his pain and suffering, loss of amenity and loss of earnings capacity.

On 13 January 1995 the Compensation Recovery Unit issued a certificate of total benefit amounting to £22,959.34. This represented all benefits received by the applicant

between 18 September 1990 and 24 May 1994 being three years and eight months from the date of his accident until payment of benefits ceased.

On 24 January 1995 the applicant received a total award of damages of £25,000 out of which the sum of £22,959.34 was retained by the Compensation Recovery Unit, according to the Social Security Administration Act 1992. Consequently, the applicant was left with the sum of £2,040.66.

On 16 March 1995 the applicant appealed the assessment of the amount of benefit paid to him as a consequence of his accident. He claimed that the benefits listed on the certificate of total benefit in part were not paid as a result of the accident.

On 4 January 1996 the Social Security Appeal Tribunal dismissed the applicant's appeal stating in particular:

"The appellant put his case at length to the Tribunal and this may be summarised that as he had a pre-existing back condition he considered that he would have recovered after 2 years from the injury and that only benefit paid during a two year period should be recovered from him. In his opinion any disability after that was due to a pre-existing degenerative condition which he would have had in any event and in that respect he should not have to pay anything further during the subsequent period following on the first 2 years after the accident.

Although the appellant contended that the £25,000 was compensation in respect of earnings alone, the Tribunal found this difficult to accept as he had clearly had an injury as a result of an accident and the damages due to that injury must have been quantified and settled in his claim. On the other hand the Adjudication Officer contended that the benefit paid had been attributable to the relevant accident and that the legislation did not require the accident to be the sole cause of the payment of benefit but it required that benefit must have been paid as a consequence of the relevant accident.

The Tribunal was satisfied as to the fact that the compensation in this case had been paid as a result of an accident and that furthermore the benefit paid to the appellant had also been paid as a consequence of the relevant accident. The Tribunal had no doubt that the law required compensators to deduct from compensation an amount equivalent to the benefit payments made as a consequence of the accident if the settlement exceeded the small payment limit of £2,500. In these circumstances the Compensation Recovery Unit had correctly been reimbursed and the amount set out in the documents of £22,959.34 had been collected by the Compensation Recovery Unit and paid into State funds.

The Tribunal noted the arguments which the appellant put forward ..., but ... the Tribunal was unable to see that his arguments helped him in any way bearing in mind that the benefit had been paid as a consequence of the relevant accident and that the legislation does not require the accident to be the sole cause of the payment of benefit."

B. Relevant domestic law and practice

The social security benefits in issue

Where a person is injured or incapacitated by accident or disease, that person may be entitled to receive certain social security benefits from the public purse. The social security benefits relevant to the present case were statutory sick pay, sickness benefit, invalidity benefit and reduced earnings allowance.

Statutory sick pay, sickness benefit and invalidity benefit are contributory benefits intended to provide a measure of earnings replacement whilst a person is unable to work due to incapacity.

Statutory sick pay is an income-replacement benefit which is paid by employers to employees through their normal pay channels. To be eligible for it an employee must have had average earnings during the eight weeks before the start of his sickness which were at least as high as the lower earnings limit for the payment of National Insurance contributions. During the relevant period, statutory sick pay was paid at a single rate, and employers were able to recover a percentage of their statutory sick pay from the State. After an employee had received statutory sick pay for 168 days (24 weeks) within a period of interruption of employment, he was deemed to have met the requirements for entitlement for invalidity benefit.

Sickness benefit is intended to provide a measure of earnings replacement whilst a person is unable to continue with his employment due to incapacity for work. At the relevant time, payment of sickness benefit was limited to a total of 168 days (24 weeks), after which invalidity benefit would become payable.

Invalidity benefit is an earnings replacement benefit, which is paid at a basic personal rate. It becomes payable after statutory sick pay or sickness benefit has been received for 168 days (24 weeks) and can then be paid indefinitely.

Reduced earnings allowance was one of the benefits under an industrial injuries scheme which provided non-contributory, no-fault benefits for disablement caused by accidents at work or by one of the listed prescribed industrial diseases. The scheme only covers disablement suffered at work at a time when a person is an employed earner as defined for National Insurance purposes. The armed forces and the self-employed are excluded from the scheme. Industrial injuries benefits are generally payable in addition to other sickness and invalidity benefits and are taken into account as income in calculating entitlement to income related benefits. They are tax-free and are paid regardless of whether the recipient is working at the time of payment and regardless of his earnings, if any. Reduced earnings allowance compensated employed earners who could not return to their regular job or carry other suitable work of an equivalent standard because of the effects of an industrial accident or prescribed industrial disease. It was payable either alone or with industrial injuries disablement benefit, provided that there was a disablement assessment of 1% or more. This benefit was abolished in respect of

accidents and diseases which arose on or after 1 October 1990, but existing recipients were not affected by this change, and new awards continued to be made for accidents which had occurred or diseases with a date of onset before 1 October 1990. Although entitlement to this benefit was dependent upon the level of disablement suffered being at least 1%, it was primarily intended to compensate an injured person for loss of earnings due to that disablement.

The Compensation Recovery Scheme

The Compensation Recovery Scheme ("the Scheme") was introduced by the Social Security Act 1989 and subsequently consolidated in the Social Security Administration Act 1992 ("the 1992 Act"). The 1992 Act received Royal Assent on 21 July 1989, and under transitional arrangements it applied only to compensation payments made on or after 3 September 1990 (the date of the coming into force of Section 22 of the Social Security Act 1989) where, in injury cases, the injury had been sustained on or after 1 January 1989 (Section 81(7) of the 1992 Act).

The Scheme was based upon the principles that negligent parties should not have any of their liabilities met through the social security system and accident victims should not be compensated twice. The Scheme operated on the general principle that when a negligent wrongdoer or "compensator" made a payment of compensation to an injured person, that person was required to repay to the Compensation Recovery Unit an amount equivalent to any sums already paid by way of prescribed social security benefits which were claimed and received in consequence of that injury. That sum was, in practice, paid directly to the Compensation Recovery Unit by the compensator. The prescribed benefits which were recoverable include the three benefits relevant to the present application. The Scheme applied whether or not liability had been admitted, and whether following an award of damages by a court or an out-of-court settlement. The injured person must have been given formal notification of the amount deducted by the compensator in a certificate of total benefit.

However, the principle of recoupment was subject to certain modifications. Only sums actually paid up to the date of an award/settlement or for five years, whichever period was the lesser, were recouped (Section 81(1) of the 1992 Act). No future entitlement to benefits was taken into account. Compensation was not recouped where the settlement is £2,500 or less ("the small payment limit"), or where an injured person received payment under a private insurance policy which they had purchased (Sections 81(3) and 85 of the 1992 Act). The Scheme included an appeal mechanism, under which an individual could challenge the amount, rate, period or benefits specified in his or her certificate of total benefit (Section 98 of the 1992 Act).

Section 93(2)(a) of the 1992 Act provides that "where a party to an action makes a payment into court which, had it been paid directly to the other party, would have constituted a compensation payment, the making of that payment shall be regarded for the purposes to this Part of this Act as the making of a compensation payment, but the

compensator may withhold from the payment into court an amount equal to the relevant deduction".

The Scheme was reformed by the Social Security (Recovery of Benefits) Bill which received Royal Assent in March 1997 and which came into force in October 1997. The basic principles remained unchanged, but the compensator became liable for all recoverable benefits and is able to off-set this liability against compensation otherwise payable to the injured party on a "like-for-like" basis. Compensation for pain and suffering is, therefore, protected. Moreover, the small payments limit has been discontinued.

COMPLAINTS

The applicant complains that by the operation of the Social Security (Administration) Act, he has been deprived of the fruits of his National Insurance contributions. He has also been deprived of the recovery of damages he received or should have received to compensate him for the personal pain and suffering and loss of amenity. The applicant also contends that by the recoupment under the Scheme, he has been deprived of the benefits that the State had contracted to pay him under the National Insurance scheme. He invokes Article 1 of Protocol No. 1 to the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 16 March 1995 and registered on 20 December 1995.

On 9 April 1997 the Commission decided to communicate the application.

The Government's written observations were submitted on 11 July 1997. The applicant replied on 13 January 1998, after an extension of the time-limit for that purpose.

On 22 April 1998 the Commission granted the applicant legal aid.

THE LAW

1. The applicant complains that by the operation of the Social Security (Administration) Act, he has been deprived of the fruits of his National Insurance contributions and of the recovery of damages he received or should have received to compensate him for the personal pain and suffering and loss of amenity. He also contends that by the recoupment under the Scheme, he has been deprived of the benefits that the State had contracted to pay him under the National Insurance scheme. He invokes Article 1 of Protocol No. 1 to the Convention.

Article 1 of Protocol No. 1 to the Convention provides 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 preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government submit that the claim in negligence itself is not, prior to final determination or settlement, enforceable and cannot therefore constitute a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention. They submit that it is only the proceeds of the settlement that are capable of constituting "possessions". They recall that a claim will only be a possession once it has "given rise to a debt ... that was sufficiently established to be enforceable" (see Eur. Court HR, Stran Greek Refineries and Stratis Adreadis v. Greece judgment of 9 December 1994, Series A no. 301-B, pp. 84-85, paras. 60-61). The Government also submit that the social security benefits themselves are not capable of constituting "possessions", forming part as they do of a general insurance scheme based on the principle of social solidarity.

The Government further submit that the applicant's suggestion that the benefits payable to him were the "fruits" of his payments to the National Insurance Fund is misguided. They stress that the National Insurance scheme is financed on an annual basis, such that the rates and levels of contributions are set each year to ensure that the overall income to the National Insurance Fund is sufficient to pay for all benefits due. Although an individual's contributions provide a foundation for calculating entitlement to certain future personal benefits, the contributions do not actually pay for those benefits but rather for current benefits paid in that year. If recoupment of National Insurance benefits did not take place under the Compensation Recovery Scheme, an increased burden would inevitably fall on other contributors and taxpayers who had no connection with the accident in question and received no compensation in respect of it. The Government stress that the National Insurance Fund is not designed to offer a guaranteed return on the payment of contributions, nor to cover all unexpected requirements such as the inability to work due to accident, injury or disease. The system is based upon an arrangement whereby those who are working pay for the social security benefits of those who are, for example, retired, sick or unemployed. Furthermore, National Insurance contributions do not only provide entitlement to certain of the benefits which are recoverable under the Compensation Recovery Scheme. The Government note that a number of the benefits covered by the Compensation Recovery Scheme, such as income support, are not funded by National Insurance. They add that in any event, it was not the benefits themselves which were recouped, but an amount of the settlement award equivalent to the benefits.

The Government go on to submit that even assuming that the proceeds of the settlements constitute a "possession" under Article 1 of Protocol No. 1 to the Convention,

the recoupment should properly be characterised as control of the use of property that strikes a fair balance between the general interest of the community and the requirements of the protection of the individual's fundamental rights. The Government argue that the principal aims behind the introduction of the compensation recovery scheme in 1989 were the avoidance of double recovery by claimants, and the shifting of the burden from the taxpayer to the compensating wrongdoer. They submit that the Scheme has operated fairly and in a proportionate manner in the present case. Only those benefits claimed and received by the applicant as a consequence of his accident or injuries were recouped, recoupment occurred only up to a maximum level of the amount of compensation recovered, and no account was taken of future entitlement to benefits. The Government add that the applicant has not submitted a copy of his statement of claim or schedule of special damages with his application to the Commission, but he contended in his appeal before the Social Security Appeal Tribunal that his £25,000 award was compensation in respect of earnings alone.

The Government further submit that the benefits received by the applicant in the present case included statutory sick pay, to which specific reference was made by the Commission in the Kightley case (see No. 28778/95, Dec. 9.4.97, unpublished). In their view, sickness benefit and invalidity benefit can be similarly categorised as direct replacements for loss of earnings in the relevant period. Furthermore, it was accepted in the Kightley case that the other benefits received by the applicant were properly set off against his award of damages. The Government submit that there is no distinction of principle or logic between the Kightley case and the present application. The mere fact that the extent of the injuries suffered and the damages consequently awarded in the Kightley case were greater than the present application is, in the Government's view, irrelevant to the question of the compliance of the Scheme with the Convention.

The applicant adopts, mutatis mutandis, the observations in reply to the observations of the respondent Government, submitted on behalf of the applicants in Applications Nos. 28918/95, 30135/95 and 30291/96 dated 1 December 1997. He adopts and repeats those paragraphs which are general to all the applicants' cases, namely paragraphs 4 to 6 inclusive and paragraphs 28 to 63 inclusive (save where they relate specifically to the other applicants' cases).

As to the application of Article 1 of Protocol No. 1 to the Convention, the applicant, referring to the judgment of Pressos Compania Naviera S.A. and Others v. Belgium (Eur. Court HR, judgment of 20 November 1995, Series A no. 332) and the judgment of Stran Greek Refineries and Stratis Andreadis v. Greece (Eur. Court HR, judgment of 9 December 1994, Series A no. 301-B), argues that his claim for damages in tort for personal injury was clearly sufficiently established to constitute "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. The applicant further submits that he was entitled to payment of the benefits he received as soon as (and as long as) he satisfied certain established conditions. None of these benefits were received merely on the basis of the exercise of a discretion in his favour by the Government. In addition, more than a half of the benefits received were contributory benefits, the financing of which depended wholly or mainly on contributions by the

applicant and his employer. The applicant stresses that as under a private insurance scheme, following the fulfilment of certain conditions, the "insured" was entitled to payment of a certain premium or benefit for the duration of the entitlement insured. Consequently, the applicant was entitled to invoke the protection of Article 1 of Protocol No. 1 to the Convention to ensure the peaceful enjoyment of the benefits derived from his contributions to the National Insurance Fund.

The applicant further submits that contrary to the Kightley case to which the Government refer, the operation of the Scheme not only resulted in the recoupment of sums awarded by way of damages paid for loss of earnings for which benefits had been received but also in the recoupment of a large part of any award for pain and suffering and future loss of earnings.

He observes that the Government admit that all the relevant benefits (save for disablement benefit) are essentially loss of earning replacement benefits; it is only in relation to industrial injuries disablement benefit that the Government suggest that this benefit was "a compensation for a non-pecuniary loss". The applicant submits that industrial injuries disablement benefit was introduced by the Social Contributions and Benefits Act 1992, and can comprise disablement pension, severe disablement allowance, reduced earnings allowance, attendance allowance and increased disablement pension. He notes that under the new Scheme introduced by the Social Security (Recovery of Benefits) Act 1997, the first three of these industrial disablement benefits are to be recovered only from compensation for earnings lost during the relevant period and only the latter two are recoverable from compensation for cost of care incurred during the relevant period. Irrespective of this assessment of their purpose, the applicant maintains that under the Scheme these benefits were recouped from compensation unconnected with past loss of earnings or costs of care incurred. Furthermore, in relation to invalidity benefit and sickness benefit, one of the fundamental conditions for eligibility was that the claimant had an adequate national insurance contribution record.

The applicant adds that the figure proved, in comparison with the Kightley case, a disproportionate impact of the Scheme in his case. Whereas Mr Kightley was left with 97.4% of his damages award, in the applicant's case the Compensation Recovery Unit recovered an excessive proportion of the overall damages which bore, in the applicant's view, no relation to the special damages for past loss claimed. He claims that the operation of the Scheme amounted to an interference in relation to his claim in tort for damages for personal injury, his right to "peaceful enjoyment" of the social security benefits to which he was entitled by virtue of his National Insurance contributions and the sums awarded in the action. The applicant further argues that the Scheme failed to strike a fair balance and has left him to bear "an individual and excessive burden".

The Commission first recalls that Article 1 of Protocol No. 1 to the Convention guarantees in substance the right of property. It comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to

certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. However, the three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, for example, Eur. Court HR, Tre Traktörer AB v. Sweden judgment of 7 July 1989, Series A no. 159, pp. 22-23, para. 54; Air Canada v. the United Kingdom judgment of 5 May 1995, Series A no. 316, pp. 36-37, para. 29).

The Commission considers that, as in the above-mentioned Kightley v. the United Kingdom case (No. 28778/95, Dec. 9.4.97, unpublished), the interference complained of in the present case was the result of the Compensation Recovery Unit's exercise of its powers under the Social Security Act 1989, as repealed and re-enacted, which provided for the Compensation Recovery Scheme. The Scheme was based on the principle that there should not be double compensation for the same loss and that the burden should be shifted from the taxpayer to the compensating wrongdoer. Where a person is injured or incapacitated by accident or disease, he or she may be entitled to claim certain social security benefits. If the injury or incapacitation is caused by the negligence of a wrongdoer, the person may also be able to sue the wrongdoer for damages in tort. When a payment of compensation is made, the person must repay to the Compensation Recovery Unit an amount equivalent to social security benefits which he or she claimed and received in the relevant period.

It was in the exercise of these powers that the sum of £22,959.34 was recouped by the defendant from the total damages awarded to the applicant and retained under the Scheme as representing the value of the benefits already received by the applicant.

Against this background, the Commission considers that the applicant's complaints fall to be examined under the head of "securing the payment of other contributions", within the rule in the second paragraph of Article 1 of Protocol No. 1 to the Convention. That paragraph explicitly reserves the right of Contracting States to pass such laws as they deem necessary to secure the payment of other contributions (see, mutatis mutandis, Eur. Court HR, Gasus Dosier- und Fördertechnik GmbH v. the Netherlands judgment of 23 February 1995, Series A no. 306-B, p. 48, para. 59).

The Commission considers that the principle that social welfare benefits are provided on the basis of immediate need, and may therefore be recovered by the State from a subsequent award of damages, cannot be said to be incompatible with Article 1 of Protocol No. 1 to the Convention as such. It is not unreasonable to regard the social security benefits the applicant received before and pending resolution of his claim for damages as being in the nature of payments on account of his damages for his loss.

This is particularly clear where sick pay benefit, statutory sick pay and invalidity benefit are received, and then a figure is subsequently obtained by way of special

damages for loss of earnings in the relevant period. The Commission has already stated that the aim of any award of special damages is to put the victim of an accident in the same financial position as he would have been in if the accident had not happened. A person who receives both his salary (by way of special damages) and the various welfare benefits for which he is eligible, has indeed, overall, received more money than if the accident had not happened (see No. 28778/95, Kightley v. the United Kingdom, Dec. 9.4.97, unpublished).

The same principle can be applied to the further benefit the applicant received, namely reduced earnings allowance. Although entitlement to this benefit was dependent upon the level of disablement suffered being at least 1%, it was primarily intended to compensate the applicant for loss of earnings due to his disablement, the loss being recoverable by the way of an award of special damages. Accordingly, it is permissible to set this benefit off against that part of the subsequent award of damages which compensated the applicant for loss of earnings and other quantifiable losses occasioned by the accident.

Article 1 of Protocol No. 1 to the Convention also requires that there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite proportionality will not be found if the person concerned has had to bear an individual and excessive burden (see, for example, Eur. Court HR, Lithgow and Others v. the United Kingdom judgment of 8 July 1986, Series A no. 102, p. 50, para. 120). In this connection the applicant complains that the Scheme led to the recovery of damages awarded for loss of earnings for which benefits had been received, but also a large part of the damages awarded for pain and suffering and for future loss of earnings for which no benefit was received.

The Commission recalls that the applicant instituted proceeding for damages for personal injury against his employer. The court agreed a total award of damages of £25,000 out of which the sum of £22,959.34 was retained under the Scheme in respect of benefits received by the applicant from the date of his accident.

The Commission observes that the applicant has given neither the details of his claims for damages nor the breakdown of his award of general and special damages. The Commission is, therefore, unable to establish to what extent the applicant's claims were satisfied and what part of the sum awarded represented general damages and what part represented special damages.

The Commission considers that the sum of £2,040.66 which the applicant recovered after the recoupment under the Scheme depended directly on the total damages awarded by the court. Had the total damages awarded by the court been higher, the applicant would, after the recoupment have recovered a bigger sum. However, it is for the national court not for the Commission to assess the applicant's entitlement to and amount of damages.

The Commission notes that the major part of the benefits paid to the applicant in the relevant period, whose equivalent was then retained under the Scheme, included statutory sick pay, sickness benefit and invalidity benefit, all categorised as income-replacement benefits recoverable by means of special damages. The applicant was also in reception of reduced earnings allowance. The Commission has already stated above that although the entitlement to this benefit depended upon the level of the applicant's disablement, it compensated him for his loss of earnings due to his disablement, the same loss for which the applicant sought to recover special damages. Accordingly, the sum of damages which was recouped from the total damages awarded to the applicant by the court can be regarded as compensation for the same form of losses for which he had already been paid through the National Insurance scheme.

In these circumstances, and given that the applicant received and kept the benefits whose amount was subsequently recouped under the Compensation Recovery Scheme, the Commission finds that the operation of the Scheme leaving the applicant with £2,040.66 cannot be regarded as disproportionate.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The Commission notes that the applicant adopts the observations submitted on behalf of the applicants in Applications Nos. 28918/95, 30135/95 and 30291/96 including their submissions relating to the complaints under Article 14 and Article 6 para. 1 of the Convention. However, the Commission does not consider these submissions to be sufficient to justify its examination of these complaints given that they were not the subject of the applicant's original application.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber