AS TO THE ADMISSIBILITY OF

Application No. 20447/92
by Jennifer JAMES
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 5 May 1993, the following members being present:

MM. E. BUSUTTIL, Acting President of the First Chamber
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. B. MARXER
G.B. REFFI

Mrs. M.F. BUQUICCHIO, Secretary to the First 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 31 July 1992 by Jennifer JAMES against the United Kingdom and registered on 5 August 1992 under file No. 20447/92;

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 1964 and resident in Upminster, Essex. She is represented before the Commission by Messrs. Birnberg & Co., Solicitors, London, and Mr. A. Buchan, barrister.

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

The case arises out of a violent incident and family row between the applicant, her mother and her stepfather on the evening of 7 October 1986, as a result of which the police, a social worker and a doctor were called, the last two certifying the applicant's emergency admission to a mental hospital for up to 72 hours for assessment. The facts of this incident are in dispute between the applicant and these two people.

The social worker said that she was on emergency duty when around 22.45 hours on 7 October 1986 she was called to attend the applicant's house by the police. The police informed her that the applicant had struck her stepfather on the head with a glass ornament, knocking him out, and that they had also sent the police surgeon to the house as the family were distressed.

The social worker found the house in considerable disarray, with glass all over the place from two broken glass doors, and the applicant and her mother distressed. The mother said the applicant had walked through the glass door to reach her stepfather. She also said that the applicant had been depressed lately and bulimic. The social worker

found the applicant in bed wrapped up like a ball with blankets on her head. The social worker considered that the applicant did not appear to understand anything that was going on around her, and could not explain how the damage had happened in the house or what had caused her to be upset. When the doctor arrived, according to the social worker, the applicant started shouting and curled up into a ball again. The social worker and the doctor had a discussion and formed the view that the applicant and her mother appeared to be mentally ill. In their presence the applicant then allegedly verbally abused her stepfather.

The social worker and doctor concluded that the applicant could not be left in the house in the state that they judged her to be in, because of the potential danger. They made an emergency order removing her to hospital pursuant to sections 2 and 4 of the Mental Health Act 1983 (the 1983 Act). Section 2 provides for a patient to be admitted into hospital and detained for assessment if suffering from mental disorder of a nature or degree which warrants such detention in the interests of the patient's health or safety. Such admissions should normally be made by two doctors, but section 4 provides that, in cases of urgent necessity, an admission for up to 72 hours can be made on the approval of a social worker or nearest relative and one doctor. Section 13(2) of the Act requires a social worker in these circumstances to conduct an interview with the patient in order to be satisfied that a hospital admission is necessary.

The applicant was forcibly taken to hospital, but apparently released shortly afterwards (time and date unspecified).

The applicant maintains that she intervened in a dispute between her mother and stepfather who was allegedly behaving in a threatening and violent manner towards her mother. (They have since divorced.) She denies having been abusive at any stage, but had simply asked the social worker to leave her alone. She had not wanted to see the doctor. She claims to have been neither interviewed by the social worker nor examined by the doctor, as was required by sections 12 and 13 of the 1983 Act.

In February 1990 the applicant sought High Court leave to sue the health authority for false imprisonment. The authority was vicariously liable for the social worker and doctor. Such leave is required by section 139(1) of the 1983 Act which provides as follows :-

> "No person shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act or any regulations or rules made under this Act, or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment or authority having jurisdiction under Part VII of this Act, unless the act was done in bad faith or without reasonable care."

The purpose of this section is to protect a social worker or medical witness from frivolous litigation, as well as from the consequences of a wrong decision which might have been taken in the heat of an emergency but in good faith.

The applicant did not allege that the social worker and doctor had acted in bad faith, but she claimed that they had acted without reasonable care.

The High Court and the Court of Appeal both refused leave, without resolving the disputed facts, because on the objective evidence before the two professionals (complaints from the injured stepfather, smashed doors, broken glass everywhere, the house in substantial disarray and the family's great distress) there was ample material upon

which they could decide as they did, reasonably and in good faith. The procedures laid down by the 1983 Act were found to have been properly observed and therefore the social worker and doctor were entitled to the protection from suit afforded by section 139 of the Act, even if their decision may have been wrong in substance, given the fact that the applicant was quickly released from hospital and has not been a mental patient since. Leave was refused because an action for false imprisonment would be bound to fail (final decision : Court of Appeal 12 February 1992).

COMPLAINTS

The applicant alleges that she was unlawfully detained contrary to sections 4, 12 and 13 of the 1983 Act and, consequently, in breach of the requirement of lawfulness specified in Article 5 para. 1 (e) of the Convention. She claims that there was no justification for her detention in a mental hospital and that her detention was arbitrary in violation of Article 5 para. 1 of the Convention.

She also alleges that she was denied effective access to court in breach of Article 6 of the Convention in the determination of her civil rights.

THE LAW

1. The applicant complains that her emergency detention in a mental hospital for a short time in October 1986 was in breach of Article 5 para. 1 (Art. 5-1) of the Convention. In particular she claims that the requirement of lawfulness laid down in Article 5 para. 1 (e) (Art. 5-1-e) of the Convention was not observed in her case.

The relevant part of Article 5 para. 1 (Art. 5-1) of the Convention provides as follows :

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
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> ...
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> e. the lawful detention ... of persons of unsound mind ..."

The purpose of the protection afforded by Article 5 para. 1 (Art. 5-1) of the Convention is to protect the individual from arbitrary detention. Normally the detention of someone believed to be of unsound mind can only be effected on the basis of objective medical expertise and the mental disorder must be of a kind or degree warranting compulsory confinement (Eur. Court H.R., Winterwerp judgment of 24 October 1979, Series A no. 33, p. 18, para. 39). However "where a provision of domestic law is designed, amongst other things, to authorise emergency confinement of persons capable of presenting a danger to others" or to themselves, "it would be impracticable to require thorough medical examination prior to any arrest or detention. A wide discretion must in the nature of things be enjoyed by the national authority empowered to order such emergency confinements" (Eur. Court H.R., X v. the United Kingdom, judgment of 5 November 1981, Series A no. 46, p. 19, para. 41).

The applicant alleges that the social worker and doctor who admitted her to hospital did not follow the requirements of the Mental Health Act 1983 (the 1983 Act). The Commission notes, however, that the domestic courts found that the procedural requirements of that legislation had been followed. The Commission observes that the social

worker and the doctor had attempted to talk to the applicant, and that this may be considered an attempt to interview and medically examine the applicant in the circumstances. The Commission further notes that the domestic courts also found that there was sufficient evidence before these two professionals for them to have reached the conclusions they did reasonably and fairly : the applicant's stepfather had complained to the police about being hit on the head by the applicant with a glass ornament ; two glass doors had been broken leaving glass everywhere and the house was in considerable disarray ; the applicant's mother told the social worker that the applicant had been feeling depressed and the family was in a state of distress.

The Commission observes that the applicant had remedies at her disposal, albeit of a limited nature, by way of an application for habeas corpus or a civil action for false imprisonment if leave is given by the High Court under section 139 of the 1983 Act. The applicant did not pursue an application for habeas corpus and leave to sue for false imprisonment was refused on the grounds that the social worker and doctor had clearly acted in good faith on reasonable grounds and that the proceedings would be bound to fail.

In these circumstances the Commission finds nothing in the case to substantiate the applicant's claim that her compulsory admission for assessment in a mental hospital for a short period was unlawful under domestic law or under Article 5 para. 1 (e) (Art. 5-1-e) of the Convention. The Commission concludes that the present case does not disclose any appearance of arbitrary detention in violation of Article 5 para. 1 (Art. 5-1) of the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant next complains that by virtue of the operation of section 139 of the 1983 Act she has been denied effective access to court in breach of Article 6 (Art. 6) of the Convention.

The Commission and Court have examined a similar limitation on access to court in the Ashingdane case :-

> "55. In its Golder judgment of 21 February 1975, the Court held that 'Article 6 para. 1 (Art. 6-1) secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal' (Series A no. 18, p. 18, para. 36). This 'right to a court', of which the right of access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 para. 1 (Art. 6-1) ...
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> 56. The applicant did have access to the High Court and then to the Court of Appeal, only to be told that his actions were barred by operation of law ... To this extent, he thus had access to the remedies that existed within the domestic system.
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> 57. This of itself does not necessarily exhaust the requirements of Article 6 para. 1 (Art. 6-1). It must still be established that the degree of access afforded under the national legislation was sufficient to secure the individual's 'right to a court', having regard to the rule of law in a democratic society ...
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> Certainly, the right of access to the courts is not absolute but may be subject to limitations ; these are permitted by implication since the right of access 'by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the

community and of individuals' (see the above mentioned Golder judgment, p. 19, para. 38, quoting the 'Belgian Linguistic' judgment of 23 July 1968, Series A no. 6, p. 32, para. 5). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Conventon's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field ...

Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired ... Furthermore, a limitation will not be compatible with Article 6 para. 1 (Art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

58. Section 141 of the (Mental Health Act 1959) placed a hindrance on Mr. Ashingdane's recourse to the national courts. According to the concurring evidence before the Court, the mischief that section 141 sought to avoid was the risk of those responsible for the care of mental patients being unfairly harassed by litigation ...

Whilst that objective is in itself legitimate in relation to hospital staff as individuals, the protection from suit enjoyed by the Department of Health and Social Security and by the local Health Authority in the actions brought by Mr. Ashingdane calls for closer scrutiny.

59. ... Section 141 only partially precluded the responsible authorities from being sued, in respect of a refusal of this kind, for breach of statutory duty under section 3 of the 1977 Act, as it would have allowed any such action alleging bad faith or negligence to proceed, subject to leave of the High Court being obtained ... In the instant case, no such allegation was made against the responsible authorities and consequently Mr. Ashingdane's claims were barred.

In view of all these circumstances, the restriction imposed in the present case by operation of section 141 of the 1959 Act, in limiting any liability of the responsible authorities arising from section 3 of the 1977 Act to acts done negligently or in bad faith, did not impair the very essence of Mr. Ashingdane's 'right to a court' or transgress the principle of proportionality ...

60. Accordingly, even assuming it to be applicable to the facts of the present case, Article 6 para. 1 (Art. 6-1) has not been violated." (Eur. Court H.R., Ashingdane judgment of 28 May 1985, Series A no. 93, pp. 24-26, paras. 55-60)

The Commission finds nothing in the present case to distinguish it from the Ashingdane judgment. Like section 141 of the Mental Health Act 1959 in the Ashingdane case, the restriction on the applicant's access to court imposed by section 139 of the 1983 Act pursued the legitimate aim of protecting social workers and doctors in the execution of their duties in good faith and with reasonable care. No allegation of bad faith was made by the applicant and her allegation of a lack of reasonable care on the part of the social worker and police surgeon was rejected by the domestic courts as groundless. Consequently her civil claim against the health authority was barred in the same way that Mr. Ashingdane's claim was restricted. In the Commission's view the operation of the 1983 Act in the present case did not impair the very essence of the applicant's "right to a court" or transgress the principle of proportionality.

The Commission concludes that the present case discloses no appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention. It follows that this part of the application must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — Acting President of the First Chamber

(M.F. BUQUICCHIO) — (E. BUSUTTIL)