AS TO THE ADMISSIBILITY OF

Application No. 13884/88
by Alan NORTHCOTT
against the United Kingdom

The European Commission of Human Rights sitting in private on 5 May 1989, the following members being present:

MM. J.A. FROWEIN, Acting President
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
H.G. SCHERMERS
H. DANELIUS
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
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 11 September 1987 by Alan NORTHCOTT against the United Kingdom and registered on 24 May 1988 under file No. 13884/88;

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 citizen of the United Kingdom, born in 1952 and resident in Plymouth. He is unemployed.

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

The applicant has a son, Nicholas, born in December 1973, who is profoundly deaf. The child was assessed by his local education authority (LEA) as having special educational needs in 1976, his hearing impairment being compounded by other difficulties. Until the age of ten he attended the Hartley House School for the Deaf in Plymouth where he received exceptional educational provision with one-to-one support full time from a qualified teacher of the deaf and also from a classroom assistant. He was taught mostly in isolation from other pupils at the school. The LEA had decided not to send the son to a specialised boarding school earlier out of respect for the applicant's view that separating Nicholas from his family in the early years could have had an adverse effect on his development. Hartley House School was closed in July 1984 because with just 21 pupils

having a wide age (2-17 years) and ability range it proved increasingly difficult to provide a full curriculum for all pupils.

The son was subsequently placed in two local special schools, but his difficulties in learning, communication and behaviour became more apparent. The LEA considered that it had no school in its region which could provide for the son's complex needs and recommended that he be sent to a boarding school, the Royal School for the Deaf, in Manchester. The applicant objected to the proposal because that school is 450 miles from the family home and he feels that his son would suffer great distress if sent to a boarding school.

On 24 February 1987, the LEA issued a formal Statement under Section 7 of the Education Act 1981 certifying the boy's special educational needs and proposing placement at a special school able to offer appropriate educational and social programmes for pupils with profound hearing loss and associated difficulties, such as the Royal School for the Deaf in Manchester.

The applicant has refused to follow this recommendation and his son has not attended school for 18 months. He is now faced with the child being made a ward of court by the LEA with a view to sending him to the said boarding school.

The applicant appealed against the LEA's Statement to the Local School Admissions Appeal Committee which upheld the LEA decision on 21 May 1987 as follows:

> "Having taken into account all the evidence given and the written material before them the Committee were of the view that (Nicholas') learning, behavioural and emotional problems could only properly be treated in a school with both specialist teachers and resources where Nicholas would be in a peer group in which he would have the opportunity to overcome his communication problems. They appreciated that there are perhaps only three such establishments in the country. Accordingly the Committee resolved to confirm the special education provisions specified in the Statement issued by the Local Education Authority in respect of Nicholas under Section 7 of the Education Act 1981."

On 6 October 1987 the LEA's decision was also confirmed on appeal by the Secretary of State for Education under Section 8(6) of the Education Act 1981, although the Secretary of State drew the parties' attention to the need for annual reviews of the child's situation. The applicant states that he was refused legal aid for judicial review of this decision.

On 23 November 1987, the Local Ombudsman of the Commission for Local Administration in England found no evidence of maladministration in the case.

COMPLAINTS

The applicant complains to the Commission that the local authority has failed to make provision for the education of his son locally and that there has been a breach of Article 2 of Protocol No. 1 to the Convention. He believes that his son would not be offered a proper education in Manchester, because being away from his home would cause him to regress.

THE LAW

The applicant has complained that his local education authority (LEA) has failed to provide education for his deaf son near

the family home and that the decision of the various education authorities to educate the child at a specialised boarding school 450 miles away from home is in breach of Article 2 of Protocol No. 1 (P1-2) to the Convention. The applicant believes that his son would suffer distress at a boarding school and regress educationally.

Article 2 of Protocol No. 1 (P1-2) 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."

The Commission has first examined the applicant's rights as a parent under the second sentence of Article 2 of Protocol No. 1 (P1-2). The Commission leaves open the question whether the applicant's disagreement with the analysis made by the education authorities of the child's special educational needs could be said to be based on deep-founded religious or philosophical convictions, rather than on natural hesitations about sending his child away to boarding school. However, even assuming that the applicant's philosophical convictions may be at issue in 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, handicapped 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 handicapped 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 in a general school (with the expense of additional teaching staff which would be needed) rather than in an available place in a special school.

In the present case the Commission notes that the child is now 15 1/2 years of age and the expert opinion of the education authorities

is that he has complex difficulties in learning, communication and behaviour which require costly specialised tuition unavailable locally. The education authorities have proposed such tuition in a specialised boarding school far from the family home, but, given school holidays, this does not entail a complete separation of the family. Moreover the placement at the boarding school is not necessarily a permanent solution as the child's progress will be kept under regular review.

In these circumstances, 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 the application is 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 — Acting President of the Commission

(H.C. KRÜGER) — (J.A. FROWEIN)