AS TO THE ADMISSIBILITY OF

Application No. 26521/95
by Clive PARSONS
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
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 21 October 1994 by Clive PARSONS against the United Kingdom and registered on 15 February 1995 under file No. 26521/95;

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 national, born in 1956 and resident in Edinburgh, Scotland. He is represented before the Commission by Mr. Cameron Stuart Fyfe, a solicitor. The facts as submitted by the applicant can be summarised as follows.

A. Particular circumstances of the case

The applicant married his former wife ("SP") on 6 June 1978. They had two children, CP born on 26 November 1978 and AP born on 13 May 1982. At the time of the divorce settlement the parties reached a matrimonial agreement with the assistance of their legal representatives. On 7 October 1988 Pontypridd County Court issued a Court Order giving effect to this agreement. That Court Order provided that the applicant transfer to SP his entire estate and interest in the former matrimonial home and its contents, that the Life Assurance policy be surrendered and the proceeds divided equally between SP and the applicant, that the provisions be in full and final satisfaction of both parties' claims against each other under the Married Women's Property Act 1882, the Inheritance (Provision for Family and Dependants) Act 1975 and the Matrimonial Causes Act 1973 (as amended). It further provided that the applicant pay directly to each of the two children periodical payments in the sum of £5.00 per week until they had each attained the age of 17 years or had completed their full-time education (which-ever was the later).

At the time of transfer the house was worth between £25,000 and £30,000 excluding an outstanding mortgage of £10,000 on the property. The applicant claims that SP agreed to a relatively small amount of maintenance being paid on the basis that she received the house and furniture.

SP subsequently got engaged to X, who lives in the former matrimonial home. The applicant claims that X runs a health club where SP works as a teacher and from which X gains a considerable income. The applicant believes that SP also claims income support.

The Child Support Agency ("CSA") assessed the applicant's liability to pay child support under the Child Support Act 1991 ("the 1991 Act") as £127.13 per week from 4 October 1993. At that time the applicant was working as a driver for Sunblest Bakeries and had a net income of about £182.00, after having paid his share of an existing mortgage with his new wife (£250 per month), community tax (£26.70 per month), petrol (£10 per week), maintenance under the Pontypridd Court Order referred to above (£10 per week), a bank loan (£98.15 per month) and an insurance policy (£33.61 per month).

On 8 November 1993 he was required to stop work because he needed an operation on his knee. He was advised by his doctor that he would not be able to return to work before June 1995. Since November 1993 the applicant has been in receipt of Invalidity Benefit and has been advised by the Department of Social Security to cease making maintenance payments until he regains employment.

The applicant states that as soon as he recommences employment the CSA will again pursue him for maintenance payments under the 1991 Act. He states that the financial pressure put on him as a result of the actions of the CSA affected his health to such an extent that in December 1993 he became so severely depressed as to attempt suicide. He was taken to hospital and detained overnight.

B. Relevant domestic law and practice

Assessment of child maintenance

The Child Support Act 1991 (the Act) provides for the assessment, collection and enforcement of periodical maintenance payable by parents in respect of children not in their care. The Act was designed to improve the position of children whose parents live apart. Research commissioned for the government white paper ("Children Come First", 1990 Cm. 1264) had indicated that 30 % of lone mothers and 3% of lone fathers received regular child maintenance and that the average payment was very low. It was considered that the burden of supporting lone parents fell largely upon the State.

The amount of child support maintenance payable by an absent parent is fixed in accordance with a formula set out in Schedule 1 to the 1991 Act, which takes into account four separate elements: the amount needed to support the child, the assessable income of the parents, the deduction rate or proportion of the assessable income which will go to the child and the protected income, which is intended to ensure that the standard of living of the absent parent is maintained at a minimum level (the amount needed for basic living expenses).

A parent with care of a child may apply to the Secretary of State for a maintenance assessment to be made. Where a parent caring for a child claims state benefits (eg. income support, family credit) he or she may be required to authorise the Secretary of State to recover child support maintenance from the absent parent (section 6).

Once a maintenance assessment is made, any prior maintenance

agreement becomes unenforceable insofar as it relates to periodic maintenance payments for the children concerned (section 10 (2)).

To implement the provisions of the 1991 Act, the Child Support Agency (CSA) was established.

Review procedures

Pursuant to sections 17 and 18 of the 1991 Act, a person may request the review of a maintenance assessment by a child support officer if there has been a material change of circumstances since the assessment was made or where the assessment was made in ignorance of, or in mistake as to, a material fact, or was wrong in law.

Pursuant to section 20, any person aggrieved by the decision of a child support officer on such a review may appeal to the Child Support Appeal Tribunal. The President of the Tribunals, a lawyer of at least 10 years' standing, is also President of the Social Security Appeals Tribunals and is appointed by the Lord Chancellor. Each Tribunal consists of a Chairman and two other persons. The Chairman is required to be a lawyer of 5 years's standing, while the other persons are drawn from a panel constituted by the President who have knowledge or experience of the area where they are to work and be representative of the persons living or working in the area.

Appeals on points of law from the Tribunal lie to a Child Support Commissioner who is a solicitor or barrister of more than 10 years standing (section 24). Leave must be granted by either the Chairman of the Tribunal which heard the case or by the Commissioner. If he finds that a decision appealed against is wrong in law, he must set it aside and either make the decision himself or send it back to the Tribunal or to a different Child Support Officer with directions as to how it is to be determined.

Appeal may be made on point of law from the Commissioner's decision to the appropriate court, namely the Court of Appeal or the Court of Session (section 25). Leave must be obtained either from the Commissioner or from the Court of Appeal or Court of Session.

COMPLAINTS

1. The applicant complains that he has been deprived of the right to have his civil rights and obligations determined by a court or independent tribunal as provided by Article 6 of the Convention. The applicant claims that since judicial review does not allow reconsideration of the merits it is inappropriate for the purposes of Article 6.

2. The applicant further complains under Article 8 of the Convention that the operation of the 1991 Act overrode a previously existing court order between the applicant and his wife such as to constitute an undue interference and a denial of respect for his family life as guaranteed by Article 8 of the Convention.

3. The applicant further complains under Article 13 of the Convention that he has no remedy under the 1991 Act to seek a review of the sum claimed from him since the only circumstances in which a remedy is available under the 1991 Act is where the applicant claims that there has been an error in the calculation of the amount of maintenance due. He accepts that the figure calculated by the CSA is correct under the 1991 Act.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the

Convention that he has been deprived of his right to have his civil rights and obligations determined by an independent tribunal. Article 6 (Art. 6) provides so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission refers to its recent decision in Application No. 24875/94, Dec. 6.9.96., in which it recalled that, while Article 6 para. 1 (Art. 6-1) guarantees to everyone who claims that an interference with his "civil rights" is unlawful the right to submit that claim to a tribunal satisfying the requirements of that provision (Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 20, para. 44), Article 6 (Art. 6) does not in itself guarantee any particular content for "rights and obligations" in the substantive law of Contracting States (cf. Eur. Court H.R., James and others v. the United Kingdom judgment of 21 February 1986, Series A no. 98, p. 46, para. 81; Lithgow and others v. the United Kingdom judgment of 8 July 1986, Series A no. 102, p. 70, para. 192) and the claim or dispute to be submitted to a tribunal must be of a "genuine and of a serious nature" (cf. Eur. Court H.R., Benthem judgment of 23 October 1985, Series A no. 97, p. 14, para. 32).

The Commission notes that the applicant accepts that the maintenance assessment imposed on him by the CSA from 4 October 1993 was calculated correctly under the 1991 Act. It further observes that the applicant ceased to be affected by that assessment on 8 November 1993, from which date he was no longer required to make maintenance payments. Further, the Commission notes that his application before the Commission was only introduced on 21 October 1994, that is eleven months after he ceased to be affected by any decision of the CSA. No further assessment of liability by the CSA appears to have been carried out.

Even assuming compliance with the six month time-limit imposed by Article 26 (Art. 26) of the Convention, the Commission considers that in view of the fact that the applicant accepts that the calculation of maintenance payment was correct under the 1991 Act, the applicant has not shown any dispute of a "serious and genuine nature" in respect of which the applicant has been denied access to court.

Further, as regards the applicant's claim that he is subject to a continuing situation since he will be subject to an assessment by the CSA and required to pay maintenance under the 1991 Act as soon as he returns to work, the Commission notes that until such an assessment is made there cannot be said to have been any determination of the applicant's civil rights and obligations to which Article 6 (Art. 6) would apply.

It follows that this part of the application must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains under Article 8 of the Convention that the overriding of the court order laying down the applicant's liability to SP by the operation of the 1991 Act constituted an undue interference into and a failure to respect his family life. Article 8 (Art. 8) provides so far as relevant, as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence."

The Commission recalls that Article 25 (Art. 25) of the Convention does not permit individuals to complain against the law in

abstracto simply because they feel it contravenes the Convention. In principle, it does not suffice for an individual to claim that the mere existence of a law violates his rights under the Convention; it is necessary that the law should have been applied to his detriment (Eur. Court HR, Dudgeon v. the United Kingdom judgment of 22 October 1981, Series A no. 45, p. 18, para. 41; Dec. 14631/89, p. 307 with other references).

The Commission recalls that the applicant ceased to pay any maintenance under the 1991 Act on 8 November 1993. While the applicant appears to complain of a continuing situation arising out of a potential liability under the 1991 Act should he recommence work, the Commission notes that the applicant has not explained how this can be said to affect his present family life. The Commission considers that in these circumstances the applicant can no longer be regarded as a victim after that date within the meaning of Article 25 (Art. 25) of the Convention of any alleged violation of Article 8 (Art. 8) of the Convention.

Insofar as the applicant complains about the assessment of 4 October 1993 and payments made between that date and 8 November 1993, the Commission recalls that eleven months elapsed before the applicant submitted his complaints to the Commission and that as such they were not submitted within the requisite six month time period laid down by Article 26 (Art. 26) of the Convention.

It follows that this part of the application must be dismissed as out of time in accordance with Article 27 para. 3 (Art. 27-3) of the Convention.

3. The applicant further complains under Article 13 (Art. 13) of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Insofar as the applicant complains under Article 13 (Art. 13) of the Convention in relation to his complaint under Article 6 para. 1 (Art. 6-1) of the Convention as to a denial of access to court, the Commission recalls that, in accordance with the established case-law of the Convention organs, Article 6 para. 1 (Art. 6-1) of the Convention provides a more rigorous procedural guarantee than Article 13 (Art. 13) of the Convention and therefore operates as a lex specialis with regard to a civil right, to the exclusion of the more general provisions of the Convention (cf., for example, No. 11949/86, Dec. 1.12.86, D.R. 51, p. 195).

Insofar as the applicant invokes Article 13 (Art. 13) in respect of his complaints under Article 8 (Art. 8) of the Convention, the Commission recalls that Article 13 (Art. 13) of the Convention requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, p. 14, para. 31). The Commission finds that the applicant cannot be said, in the light of its findings above, to have an "arguable" claim that his rights guaranteed by the Convention have been violated.

It follows that this complaint must also be dismissed as 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber