AS TO THE ADMISSIBILITY OF

Application No. 15685/89
by Joan SIBLEY, Kenneth SIBLEY and Duncan SIBLEY
against the United Kingdom

The European Commission of Human Rights sitting in private on 6 March 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
MM. L. LOUCAIDES
J.C. GEUS
M.P. PELLONPÄÄ

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 8 August 1989 by Joan SIBLEY, Kenneth SIBLEY and Duncan SIBLEY against the United Kingdom and registered on 25 October 1989 under file No. 15685/89;

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 facts of the present case, as submitted by the applicants, may be summarised as follows.

The applicants are United Kingdom citizens born in 1923, 1926 and 1964 respectively. The first two applicants are the parents of the third. The parents reside in Luton, Bedfordshire; the son resides in Hitchin, Hertfordshire.

This is their second application to the Commission and continues their first (No. 11186/84, Dec. 15.3.84) which concerned the refusal by the applicants' local education authority to provide selective education in a private, fee-paying school for the third applicant, in view of available comprehensive education in the locality. The Commission rejected the applicants' complaint under Article 2 of Protocol No. 1 to the Convention as manifestly ill-founded. The third applicant had been taken into care by the local authority for a year, as of May 1976, and the parents pursued various litigious actions in 1983 and 1984 about the boy's education and sought discovery of documents which might have been relevant for

their claims. These were resisted by the local authority who considered, inter alia, that the applicants' request for discovery was only in the vain hope of finding an arguable cause of action against the County Council and their officers who had been performing their statutory duties with the most careful consideration. None of the parents' litigation was successful. It was consistently rejected as disclosing no reasonable cause of action, frivolous, vexatious and an abuse of the process of the Court. Amongst the various proceedings pursued by the parents was an application to the High Court in 1984 against the local education authority and social services, seeking the removal of the alleged stigma created by their actions, which were allegedly both negligent and unlawful. This application was struck out by the Master of the Rolls and the first and second applicants' appeal and further leave to appeal were refused on 15 March 1984 by the High Court for the aforementioned reasons.

The son sought to bring his own proceedings, but his claim was again rejected by the High Court on 19 March 1986 as being frivolous, vexatious, an abuse of the process of the Court and disclosing no reasonable cause of action. Leave to appeal was refused by the Court of Appeal on 23 February 1989.

The parents have made further requests for access to the local authority's files on the family since 1969, pursuant to the Access to Personal Files Act 1987. They were informed by the local authority on 24 May 1989 that access to personal files had only been authorised by this legislation in respect of records compiled after 1 April 1989. Since this date no information about the family had been recorded. The applicants apparently continue to bombard the competent authorities with requests for access to earlier hand-written files on them.

COMPLAINTS

The parents complain that they have been denied discovery of documents held by the local authority about the whole family and are, therefore, unable to refute any statements made against them. They invoke the right to respect for private and family life ensured by Article 8 of the Convention. They also complain of the use of the Children and Young Persons Act 1969 by the local authority in taking their son into care and allegedly depriving them of any possibility of being party to the court proceedings involved and of defending their position.

The son complains of being unable to see all the files held by the local authority on him whilst he was in their care in 1976 and 1977. He also complains of being placed in a school for maladjusted children during part of this period by the local authority. He invokes Article 8 of the Convention, as well as Article 2 of Protocol No. 1 to the Convention. He submits that he requires disclosures of the local authority's files in order to establish that he was wrongly placed in unsuitable educational institutions.

THE LAW

The applicants have complained of a denial of access to local authority files concerning a period in the mid-1970's when the third applicant was placed in the care of the local education authority for educational purposes. They further complain of the care proceedings themselves. They have invoked the right to respect for private and family life ensured by Article 8 (Art. 8) of the Convention. The third applicant has also invoked his right to education ensured by Article 2 of Protocol No. 1 (P1-2) to the Convention.

However, the Commission is unable to deal with the complaints brought by the first and second applicants because they have failed to observe the six months' rule laid down in Article 26 (Art. 26) of the

Convention for the following reasons: The basis of their complaint is that the taking of the third applicant into care in the mid-1970's was allegedly unjustified, as were all apparent interferences with the family's life by the education and social services of the local authority concerned. To this end they have continuously sought access to local authority files on the family with a view to finding some basis on which to mount a successful civil claim for damages.

The parents' grievances against the local authority were ultimately determined and rejected, including their request for discovery of documents, by the refusal of leave to appeal on 15 March 1984. These applicants have continuously sought to revive those proceedings by their persistent letters to the local authority requesting sight of the local authority's files on the whole family since 1969. Moreover the third applicant brought his own claim about the care order proceedings ten years before. The Commission considers that such attempts by the first and second applicants to re-open the domestic proceedings in the guise of repeated requests for access to files do not create a claim of a continuing breach of Article 8 (Art. 8) of the Convention. It finds therefore that the final decision for the purposes of Article 26 (Art. 26) of the Convention in their case was that of the High Court on 15 March 1984, whereas their application was not lodged with the Commission until 8 August 1989. In these circumstances, their part of the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

As regards the third applicant's claim that his right to education under Article 2 of Protocol No. 1 (P1-2) has been violated, the Commission finds that this aspect of the case is also to be rejected under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention for non-observance of the six months' rule as his secondary education was apparently completed several years before lodging his application to the Commission.

Finally, as regards the third applicant's claim that he is denied access to local authority files for his period in their care between 1976 and 1977, the Commission finds no evidence of an interference with the applicants private and family life, ensured by Article 8 (Art. 8) of the Convention, by virtue of the fact that his own litigation against the local authority was dismissed summarily, as was his request for discovery of documents, with a final decision of the High Court on 23 February 1989. The actual interference with the third applicant's private and family life occurred in 1976-1977 when he was taken into care. He was the subject of bitter litigation between his parents and the local authority, during which the local authority's reasons for and evidence in support of their actions was thoroughly examined by the competent courts. The basis of the local authority's case was revealed to the parents, who could have explained matters to him. The local authority files are not therefore the only record of what happened at the relevant time and access to them is apparently not primordial for the third applicant's personal development (cf. No. 10454/83, Gaskin v. the United Kingdom, Comm. Report 13.11.87 paras. 89-91). It follows that this aspect 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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)