AS TO THE ADMISSIBILITY OF

Application No. 29779/96
by Peter SMALLWOOD
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
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 13 July 1995 by Peter SMALLWOOD against the United Kingdom and registered on 10 January 1996 under file No. 29779/96;

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 1956 and resident in Liverpool, England. The facts, as they have been submitted by the applicant, may be summarised as follows.

The applicant is the natural father of two boys born out of wedlock, J born in October 1986 and A born in May 1989. He had a relationship with the mother of the children over a period of three years, cohabiting between October 1986 and May 1989.

Following the breakup of this relationship (shortly before the birth of A) the boys lived with their mother and for about two and a half years between November 1989 and April 1992 the applicant enjoyed generally satisfactory access to the children pursuant to various court orders. A Court Order (by consent) of 27 April 1992 gave the applicant parental responsibility pursuant to section 4(1) of the Children Act 1989 and fortnightly contact.

After a series of disputes over access and one particular incident of violence between the applicant and the mother's boyfriend which was witnessed by the children in June 1992, the mother refused

to allow contact to continue. Unable to accept this, the applicant attended week by week for the contact with his sons which was not given and on two occasions the police were called to deal with disturbances.

On 26 March 1993 following five court welfare reports and a hearing by the County Court at which the applicant was represented by counsel, the contact order made on 27 April 1992 was rescinded and a general prohibition was made against the applicant prohibiting him from using violence towards or harassing the children or their mother. In particular the County Court noted the mother's genuine belief that contact between her children and their father was harmful to them and furthermore referred to the applicant as a man totally obsessed with his rights and the duties of other people towards him. It also noted that the eldest boy held the firm view that he does not want to see his father and notwithstanding his young age his brother was beginning to fear his father. On 1 December 1993 the appeal brought in person by the applicant to the Court of Appeal was dismissed and leave to the House of Lords was refused. On 16 December 1993, the County Court ordered a sixth court welfare report on the specific question of contact before refusing a further requested contact order.

A further application for a contact order, made by the applicant in person, was refused by the County Court on 13 July 1994. In reaching this conclusion, the Court referred to the bitterness which existed between the parties and also referred to the applicant as "a man with an obsessive outlook who had lost any sense of proportion, balance and judgment". The Court also rescinded the order of parental responsibility made on 27 April 1992 agreeing with the mother that his use of parental responsibility was not for well intentioned reasons, but rather to oppose any decision by the mother.

On the same day, the County Court made an order prohibiting the applicant from visiting the children's school on the basis that the father's approach to the school was really a "ruse to see the children and was not sincerely intentioned". It accepted the evidence of the mother that if the children saw the applicant at school they would become hysterical and that if he visited the school in their absence it would nonetheless come to their attention, causing them to be upset and to lose confidence in the school and in their mother. In addition, the Court made an order under section 91(14) of the Children Act 1989 that the father should make no application to the court under the Children Act 1989 in relation to contact or parental responsibility during the next three years without leave of the court.

Following a hearing at which the applicant appeared personally, the Court of Appeal dismissed the applicant's appeal on 1 May 1995 finding that there was at least a real danger that the manner in which the order of parental responsibility was being used at the time was such that it was right, although with hesitation, to rescind it. In relation to the order made by the lower court prohibiting the applicant from making any application for the next three years without leave, the Court of Appeal found that it was premature and set it aside. However, it did warn the applicant that if he made another request for contact which was unsuccessful then such an order could become justified. It also commented that contact with his children might be open to discussion at a less immediate future date should such an initiative be taken by the children themselves.

Legal aid had been refused to the applicant for the proceedings in the County Court and his appeal to the Court of Appeal on the basis that his appeal was not likely to succeed.

COMPLAINTS

1. The applicant invokes Article 8 and complains that the rescission of the order of parental responsibility made in his favour amounts to an interference with his right to respect for family life. He also

claims that this constitutes a breach of his children's rights under Article 8. He also complains that the order prohibiting him from visiting his children's school together with his lack of parental responsibility amount to a breach of Article 8.

2. The applicant also complains that he is discriminated against as a natural father because parental responsibility can only be rescinded under section 4 of the Children Act in the case of a natural father. The applicant claims that compared with married fathers and unmarried mothers he has been the victim of a violation of Article 8 together with Article 14.

3. The applicant invokes Article 6(1) in relation to the complaint that without parental responsibility he would have no standing in any future adoption proceedings.

THE LAW

1. The applicant complains under Article 8 (Art. 8) of the Convention of the decision to rescind the order of parental responsibility and to issue a prohibited steps order preventing him from going to his children's school. The applicant also complains under Article 14 together with Article 8 (Art. 14+8) that the Children Act 1989 discriminates against natural fathers of children born out of wedlock in relation to the rescission of parental responsibility.

Article 8 (Art. 8), so far as relevant, provides as follows:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 (Art. 14) provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, birth or other status."

The Commission considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary in accordance with Rule 48 para. 2 (b) of the Rules of Procedure to give notice of this part of the application to the respondent Government.

2. The applicant complains that without parental responsibility he would have no standing in any adoption proceedings which may take place with respect to his two children born out of wedlock. He invokes Article 6 para. 1 (Art. 6-1) which guarantees access to a court, inter alia, in the determination of a civil right.

The Commission recalls that, according to the constant case-law of the Convention organs, the Convention does not provide for an action popularis or permit individuals to complain about a law in abstracto. An applicant must be able to demonstrate that the measures, about which the applicant complains, have been applied to the applicant's detriment or that the applicant is personally and directly affected by those measures (cf., for example, Eur. Court HR, Klass v. Germany judgment of 6 September 1978, Series A no. 28, p. 18, paras. 33-34 and Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, p. 13, para. 27).

In the present case the Commission notes that no adoption proceedings have been introduced thus the question of the applicant's standing in those proceedings does not arise at this time. In these circumstances the Commission considers that the complaint of the applicant in respect of his lack of standing in adoption proceedings may be premature. To the extent however that it might be said that the applicant's existing civil rights were determined in the proceedings before the County Court and Court of Appeal, the Commission finds that the decisions of these courts took place after hearings which complied, procedurally and substantively with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

Accordingly, the Commission finds that this complaint must be declared inadmissible as manifestly ill-founded pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECIDES TO ADJOURN the examination of the applicant's complaints that there has been an interference with his right to respect for family life and that he has been subject to discrimination as a natural father;

unanimously
DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber