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 21 October 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
I. BÉKÉS
G. RESS
A. PERENIČ
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 reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 25 July 1997 and the observations in reply submitted by the applicant on 14 October 1997;

Having deliberated;

Decides as follows:

THE FACTS

A. Particular circumstances of the case

The applicant is a British citizen born in 1956 and resident in Liverpool, England.

The facts, as they have been submitted by the parties, may be summarised as follows.

The applicant is the natural father of two sons, J, born in October 1986 and A, born in May 1989. The applicant and the mother of the two boys, Ms J, have never been married.

The applicant and Ms J cohabited from November 1986 until May 1988 with two brief attempts at reconciliation in the summer of 1988.

In November 1989 Ms J applied for sole custody with care and control of the children. On 20 November 1989 His Honour Judge Crowe QC ordered that mother have interim custody, care and control with contact to be agreed between the parties and the court welfare officer.

In the first court welfare officer's report dated 28 March 1990 it was noted that the applicant was having alternate weekend visiting contact and alternate weekend staying contact. On 9 July 1990 His Honour Judge Crowe QC ordered that the parents have joint custody of the children with care and control to Ms J and alternate weekend staying contact and alternate weekend visiting contact to the applicant.

In October 1990 the mother applied for the order of 9 July 1990 to be varied after there were difficulties over contact, eventually leading to the contact breaking down. On 8 November 1990 His Honour Judge Crowe QC ordered that the interim joint custody order with care and control to the mother was to continue with the applicant to have alternate weekend staying contact.

A further court welfare officer's report on 5 March 1991 recommended that the applicant have alternate weekend staying contact and holiday contact. It appears that there were further difficulties with contact in Autumn 1991.

In the summer of 1991 Ms J commenced living with Mr J whom she later married in January 1993. On 13 April 1992, the applicant failed to return the children after contact. The applicant was arrested by the police a week later following a complaint by the mother. There was a welfare officer's report on 21 April 1992. On 24 April 1992 the parents by consent agreed that there would be a residence order in favour of Ms J, with parental responsibility and alternate weekend staying contact to the applicant.

Further problems over contact occurred in June 1992. On 28 June 1992 there was an incident of violence between the applicant and Ms J's new partner which was

witnessed by the children. The mother then ceased contact and applied for injunctive orders. The applicant was unable to accept her termination of contact and attended week after week.

Ms J obtained ex parte non molestation orders in October 1992 and the contact was suspended. In a court welfare officer's report dated 4 November 1992 it was noted that the children were against contact and that the conflict regarding contact needed to end. Two supervised contact visits took place in December 1992 and January 1993 leading to a further court welfare officer's report dated 9 February 1993 in which it was recorded that the elder child did not wish to see his father.

In a contested hearing on 26 March 1993, at which the applicant was represented, His Honour Judge Crowe QC found that the father was "a man obsessed with his rights" who possessed "so far as the mother is concerned, a venom that he cannot disguise for any length of time". The judge considered that if contact continued on a regular basis then it would be a matter of "deep concern and anxiety" for the children and would "retard their growth emotionally". The judge also noted that the elder child did not wish to see his father and the younger one was beginning to see his father as "something of a terror in the background". He rescinded the contact order of April 1992. An appeal by the applicant in person to the Court of Appeal on 1 December 1993 was unsuccessful. Leave to appeal to the House of Lords was refused in January 1994.

In February 1994 Ms J applied to change the boys' names and to have the applicant's parental responsibility revoked. After the preparation of a further court welfare officer's report there was a contested hearing before His Honour Judge Lachs on 13 July 1994. It lasted two days and the judge heard both the applicant and Ms J as well as the welfare officer.

At the end of the hearing the judge found that in the two years since the violent incident in June 1992 the children had enjoyed a happy, stable life. He concluded from the evidence of Ms J and the court welfare officer's report that direct contact would be potentially harmful. The judge identified the applicant as a "man with an obsessive outlook who had lost any sense of proportion, balance and judgment" and noted the court welfare officer's finding that the elder child displayed an unusual level of hostility for a seven and a half year old child.

The judge applying the tri-partite test for parental responsibility, examined the applicant's commitment, his reasons for applying and the attachment between the applicant and his children and found that the applicant failed all three elements. In particular, the judge was satisfied the applicant was intending to use parental responsibility not for good, well-intentioned rational reasons but to have a disruptive effect, to oppose the mother's decisions and to prove that he was always right. In the judge's view, these were unworthy reasons. Considering that the applicant did not have a positive, constructive role to play at the time or in the immediate future, the judge rescinded the parental responsibility order.

At the same hearing the judge ordered that the applicant be forbidden to attend the children's school or to harass the mother or to make any further application without the leave of the court pursuant to section 91(14) Children Act 1989. However, the judge accepted that there should be indirect contact between the applicant and his sons and that he should retain the right to receive school reports and contact, rather than visit, the school.

The applicant appealed to the Court of Appeal. On 1 May 1995 the Court of Appeal upheld the order of His Honour Judge Lachs save that they removed the restriction under section 91(14) Children Act 1989. Lady Justice Butler-Sloss stated that she was somewhat doubtful as to how an application for a rescission of parental responsibility ought to be approached as this was the first application of its type and she doubted whether it would be right to change a parental responsibility order because there was no effective contact. She added that "with some hesitation, I think that the judge cannot be faulted for applying the definition of parental responsibility coming as it does within the Act and looking at it in relation to how the father may use it in the future ... . Unusually, I think the judge is right in this case, or at least, I do not think that we can interfere with it. We have said in other cases something to the contrary but this is a very unusual case. I think, therefore, there is at least a danger, and a real danger, that the use of the order now ... is such that it would be right, with some hesitation, to rescind the parental responsibility order". The decision to rescind the parental responsibility order was upheld.

The applicant sought leave to appeal to the House of Lords from the Court of Appeal but this was refused on 12 June 1995.

B. Relevant domestic law

The Children Act 1989 provides as follows:

"2(1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.

2(2) Where a child's father and mother were not married to each other at the time of his birth-

(a) the mother shall have parental responsibility for the child;

(b) the father shall not have parental responsibility for the child unless he acquires it in accordance with the provisions of this Act.

3(1) In this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

4(1) Where a child's father and mother were not married to each other at the time of his birth-

(a) the court may, on the application of the father, order that he shall have parental responsibility for the child; or

(b) the father and mother may by agreement ("a parental responsibility agreement") provide for the father to have parental responsibility for the child.

4(3) Subject to section 12(4) an order under subsection 1(a) or a parental responsibility agreement, may only be brought to an end by an order of the court made on the application-

(a) of any person who has parental responsibility for the child; or

(b) with leave of the court, of the child himself.

4(4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application."

The provisions of section 4 and of the 1989 Act as a whole were the product of consideration and consultation by the Law Commission. The recommendations made by and the development of the Law Commission's thinking are set out in three reports (Law Com. 118 (1982), Law Com. 157 (1986) and Law Com. 172 (1988).

The Commission in 1982 found that a proposal for the automatic conferment of parental rights on unmarried fathers was a source of serious anxiety to a significant body of well-informed and experienced commentators. However, recommendations were made that the law should provide for an unmarried father to have the right to apply to the court for parental rights and duties. This was to enable the court to assimilate the position of an unmarried father to that of a married father if it considered this to be in the child's interests.

In its Report in 1986 the Law Commission recommended that courts should have the power to revoke parental responsibility orders. It was considered that courts might be reluctant to make such orders at all unless they were also able to revoke them, where it subsequently proved not to be in the child's interests for the father to have them.

Case-law

The courts have developed three key concepts in deciding whether or not to grant parental responsibility: the degree of commitment shown by the father to the child; the degree of attachment existing between father and child and the father's reasons for applying (Re H, [1991] 1 FLR 214). However, these factors are not intended to provide a difficult threshold. In re H [1996] 1 FLR 867 it was held that "when a father shows some devotion to his children he should ordinarily be granted a parental responsibility order in the absence of strong countervailing circumstances".

Domestic case-law has developed which has restricted the circumstances in which parental responsibility can be rescinded. In Re P (Terminating Parental Responsibility) [1995] 1 FLR 1048 the court held that "as a first principle parental responsibility once obtained should not be terminated on less than solid grounds, with a presumption for its

continuance". In Re P (parental responsibility) [1994] 1 FLR 578, the court stated that rescission of parental responsibility was "the very last resort".

COMPLAINTS

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

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 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 13 July 1995 and registered on 10 January 1996.

On 9 April 1997 the Commission decided to communicate the applicant's complaint concerning Article 8 alone and together with Article 14 to the respondent Government and to declare the remainder of the application inadmissible.

The Government's written observations were submitted on 25 July 1997, after an extension of the time-limit fixed for that purpose. The applicant replied on 14 October 1997, also after an extension of the time-limit.

THE LAW

1. The applicant complains that the rescission of the order of parental responsibility made in his favour constitutes an unjustified interference with his right to respect for family life under Article 8 of the Convention.

Article 8 of the Convention provides as follows:

"1. Everyone has the right to respect for his ... 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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government submit that the applicant has not exhausted all domestic remedies and that there existed an available and effective remedy in respect of the complaints made by him. The "final decision" referred to by the applicant in his application form is the decision of the Court of Appeal of 14 June 1995. It remained open to the applicant to seek leave to appeal to the House of Lords direct from the House of Lords but he did not do so.

The Government submit that family life is not established in this case. For, although this concept extends to unmarried couples, the question of its existence is a question of fact depending upon the existence of close personal ties. The facts of this case do not demonstrate the existence of sufficiently close personal ties. This applies in particular to the younger child who was born in 1989 when the applicant and the mother had ceased living together. Moreover, the applicant and the mother lived together only between November 1996 and April\May 1988, with two short attempted reconciliations in July\August 1988 and there has been no direct contact between the applicant and his children since January 1993. In any event, insofar as the applicant can establish the existence of family life, the Government submit that in practical terms it was of limited duration and of a fragile nature.

The Government further submit that the decision to rescind parental responsibility pursuant to section 4 of the Children Act 1989 did not constitute an interference with the applicant's right to respect for his family life. The court considered that such a decision was necessary in the interests of the children. The Convention creates an obligation for States to take positive steps to provide an appropriate mechanism to ensure that a reasonable balance is maintained between the competing interests of individuals under Article 8. The court exercised its jurisdiction to give practical effect to this obligation and this cannot amount to an interference.

In any event, the Government submit that any interference would be justified under Article 8 para. 2 of the Convention. It was in accordance with the law, namely, section 4 (3) of the Children Act 1989. Further, it pursued one or more of the aims enumerated in Article 8 para. 2, namely, the protection of health and of the rights and freedoms of others (i.e. of the children).

Moreover, according to the Government, the decision to rescind parental responsibility was necessary in a democratic society. It was supported by relevant and sufficient reasons and was proportionate to the legitimate aim pursued. There were six reports by Court Welfare Officers and numerous court hearings in the applicant's case. The judge who made the decision to rescind parental responsibility heard evidence over two days from the mother, the applicant and the Court Welfare Officer. The latter was of the opinion that it was crucial for the children to have a period of stability.

The Government also note that the Court of Appeal found that the decision to rescind parental responsibility was justified because of the real danger for the children from the manner in which the applicant intended to use it. On a previous occasion the

court had considered that contact between the applicant and his children would retard their growth emotionally in the future. In the light of all the above, the Government invite the Commission not to substitute its decision for that of the domestic authorities which are best placed to determine the matter given their direct and continuous involvement with the relevant evidence. In any event, the applicant is not excluded from applying for parental responsibility in the future.

In general, the Government point out that, if courts were unable to rescind parental responsibility orders when this is found to be in the best interest of the child, they would be reluctant to make such orders and mothers would be more likely to oppose their provision.

The applicant submits that, as a litigant in person with no legal background, he was not aware that an application could be made directly to the House of Lords.

The applicant further submits that family life is clearly established in this case. The mother, himself and the eldest child lived together as a family unit for almost two years. At one stage he and the mother contemplated marriage. Moreover, prior to the eldest child being born the mother and himself had a relationship for over two years. Within six months of matters coming before the courts, custody of both children was vested jointly in himself and the mother in July 1990. Subsequent to the introduction of the Children Act parental responsibility was granted by consent in April 1992. For approximately three years, after the breakdown of the relationship, the children and himself enjoyed regular contact building a loving and caring bond until the mother sought to frustrate the contact orders. The granting of joint custody, access, and parental responsibility shows that the domestic courts have acknowledged the existence of a family life and family ties with his children. It follows that the State should have acted in a manner calculated to enable that tie to be developed. The decision to rescind parental responsibility instead seeks to destroy the tie that has developed.

The applicant also submits that the decision to rescind parental responsibility constitutes an interference with his right to respect for family life. If the 1989 Act made provision for the rescission of parental responsibility in the case of mothers or married fathers and if this would be seen as an interference of their right to respect for family life, then the same should apply to an unmarried father who has been granted parental responsibility.

Further, referring to the Government's submission that the interference was justified under Article 8 para. 2 of the Convention in that it was necessary in a democratic society and pursued a legitimate aim, the applicant submits that since such interference was not deemed necessary in respect of mothers or married fathers, it should not be regarded as necessary in respect of an unmarried father with parental responsibility. Moreover, if a mother or married father can never have parental responsibility rescinded, then the rescission of parental responsibility from an unmarried father cannot pursue a legitimate aim. In any event, the rescission of parental responsibility in the present case is disproportionate to the legitimate aim pursued. It is wrong to link parental responsibility

with contact. Moreover, no remedy is available in respect of mothers or married fathers if at any time responsibility is found not to be in the interest of the child.

The Commission will first examine the Government's preliminary point that the applicant has failed to exhaust domestic remedies because he did not seek leave to appeal to the House of Lords directly from the House of Lords.

The Commission recalls that the obligation to exhaust domestic remedies under Article 26 of the Convention only requires normal use of remedies which are effective, sufficient and available. An applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach (cf. No. 9248/81, Dec. 10.10.83, D.R. 34, p. 78). Nor does an applicant need to exhaust remedies which would be a mere repetition of remedies already exercised by him.

It is furthermore established in the case-law that the burden of proving the existence of available and sufficient remedies lies upon the State invoking the rule (Eur. Court HR, Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, p. 15, para. 26; and No. 9013/80, Dec. 11.12.82, D.R. 30, p. 96).

In the circumstances of the case, the Commission notes that the applicant had already been refused leave to appeal to the House of Lords by the Court of Appeal. Moreover, the Commission considers that an application to the House of Lords for leave to appeal would have stood no prospects of success in the circumstances of the case. The Commission, therefore, considers that the applicant has complied with the domestic remedies' rule laid down in Article 26 of the Convention. As a result, the application cannot be rejected pursuant to Article 27 para. 3 of the Convention.

As regards the substance of the applicant's complaint, the Commission notes that, although both of the applicant's children were born out of wedlock, the mother, the applicant and the eldest child lived together as a family unit for more than eighteen months. Moreover, although the second child was born after the applicant and the mother had stopped living together, the applicant had custody of both children, jointly with the mother, for almost two years and, subsequently, the applicant had parental responsibility. Moreover, until March 1993, when the contact order was rescinded, the applicant used to have regular contact with his children. In these circumstances, the Commission considers that there existed family life worthy of respect within the meaning of Article 8 para. 1 of the Convention.

Moreover, the Commission considers that the order to rescind parental responsibility for his children interfered with the applicant's right to respect for his family life. It is therefore necessary to examine whether this interference was justified under Article 8 para. 2, for which three conditions must be satisfied: the interference must be "in accordance with the law", it must pursue one or more of the legitimate aims enunciated in paragraph 2 of Article 8 and it must be "necessary in a democratic society" to achieve any one of those legitimate aims (Eur. Court HR, Olsson judgment of 24

March 1988, Series A no. 130, p. 29, para. 59, referring to Eur. Court HR, W v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 27, para. 59).

As regards the first requirement, the Commission considers that the decision of the County Court on 13 July 1994 to rescind the order of parental responsibility was taken pursuant to section 4(3) of the Children Act 1989 and is "in accordance with the law".

The Commission is furthermore of the opinion that the interference had a legitimate aim under Article 8 para. 2 namely the protection of the rights of the applicant's children and as such must be regarded as effected "for the protection of the rights and freedoms of others" within the meaning of Article 8 para. 2.

It remains to be determined whether the interference was "necessary in a democratic society". The Commission recalls in this connection that, according to the case-law of the Convention organs, a margin of appreciation must be left to the Contracting States when determining whether an interference with the right to respect for family life is necessary (see Eur. Court HR, W. v. United Kingdom judgment, op. cit., p. 27, para. 60). However, the rescission of a parent's responsibility for his children is a measure which should only be applied in exceptional circumstances and can only be justified if it is motivated by an overriding requirement pertaining to the child's best interests (Eur. Court HR, Johansen v. Norway judgment of 7 August 1996, Reports 1996-III, pp. 1008-1009, para. 78).

The Commission recalls that the decision to rescind parental responsibility was made in the light of the County Court's findings on the question of contact. The decision to withdraw contact rights was taken following six welfare reports and a full judicial hearing leading the court to conclude that it was not in the best interests of the children that contact should continue. The court made express reference to the distress which the applicant's involvement had caused the children, his unreasonable behaviour and the children's (ages 7 and 5) refusal to see the applicant. The Commission accepts that these conclusions influenced the County Court in its decision to rescind parental responsibility.

Furthermore, the Commission notes that frequent reference was made by the County Court to the bitterness which existed between the applicant and the mother of his children and the applicant was referred to as an obsessive man who had lost any sense of proportion, balance and judgment. The Commission notes that the judge had the opportunity to observe the applicant during the course of the hearing as he conducted his own case before the court. The judge came to the conclusion that the applicant was intending to use parental responsibility not for good, well-intentioned rational reasons but to disrupt his children and their mother's lives. In these circumstances, the Commission considers that it was within the State's margin of appreciation for its judicial authorities to conclude that the children's best interest required the rescission of the order giving the applicant parental responsibility.

Moreover, the Commission notes that the applicant took part in the proceedings and considers that, as a result, he was involved in the decision-making process to a degree sufficient to provide him with the requisite protection of his interests (see Eur. Court HR, W. v. the United Kingdom judgment of 8 July 1987, op. cit., p. 27, paras. 62-63). Consequently the Commission finds that the interference with the applicant's right to respect for his family life was "necessary in a democratic society" for the protection of the rights of the children.

It follows that no appearance of a violation is disclosed and that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

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.

Article 14 of the Convention provides as follows:

"The enjoyment of the rights and freedoms set forth in this 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, property, birth or other status."

The Commission will examine in turn the applicant's allegations that he is being subjected to discrimination on grounds of marital status and sex.

a. Discrimination on grounds of marital status

The Government submit that since there is no breach of Article 8, Article 14 does not come into play. In any event, Article 14 protects from discrimination individuals placed in comparable or analogous situations. Between unmarried fathers with parental responsibility and married fathers there exist general differences, namely as to their obligations and duties. In particular, as regards parental responsibility unmarried fathers do not automatically acquire parental responsibility. Accordingly, unmarried fathers with parental responsibility cannot be said to be in a comparable situation with married fathers.

In any event, the Government submit that a difference in treatment is discriminatory if it has no objective and reasonable justification. The Government submit that any difference of treatment that may be found to exist on grounds of marital status has a reasonable and objective justification. The aim of section 4 of the 1989 Act is no different from that dealt with in the case of McMichael v. the United Kingdom (Eur. Court HR, judgment of 24 February 1995, Series A no. 307-B) in which both the Commission and the Court found that the decision of a Contracting State to exclude the

natural father from automatically enjoying full parental rights had an objective and reasonable justification. The legislature's aim was to provide a mechanism for identifying meritorious fathers who might be accorded parental rights. The aim of the power given to the court under section 4 (3) is identical, namely to balance the interests of the child and the mother with those of the father in the case of a conflict.

The applicant submits that since there is a breach of Article 8 of the Convention, Article 14 applies and accordingly the alleged discrimination falls within that provision. He further submits that since the Convention prohibits discrimination only when measures are adopted with regard to persons in analogous situations, and since the position of an unmarried father with parental responsibility is comparable or analogous to the position of a married father, Article 14 should safeguard unmarried fathers with parental responsibility from discrimination.

Moreover, the applicant submits that the difference in treatment has no objective and reasonable justification.

The Commission recalls the Convention organs' case-law to the effect that, although Article 14 of the Convention has no independent existence, it may play an important autonomous role by complementing the other normative provisions of the Convention and its Protocols. Article 14 safeguards individuals, placed in similar situations, from any discrimination in the enjoyment of the rights and freedoms set forth in these provisions. A measure which, although in itself in conformity with the requirements of the article of the Convention or the Protocols enshrining a given right or freedom, is of a discriminatory nature incompatible with Article 14 therefore violates those two articles taken in conjunction. However, a distinction is discriminatory only if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (Eur. Court HR, Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, pp. 15-16, paras. 32-33).

The Commission recalls that under English law a father automatically acquires parental responsibility for his children only if he is married to their mother. In contrast, the Commission notes that an unmarried father must apply for parental responsibility for his children born out of wedlock, which may be granted to him by court order or by agreement with the mother. The Commission recalls that the relationship between natural fathers and their children varies from ignorance and indifference to a close stable relationship indistinguishable from the conventional family based unit (see the above-mentioned McMichael v. United Kingdom judgment, op. cit., p. 58, para. 98). For this reason the Court has held that there exists an objective and reasonable justification for the difference in treatment between married and unmarried fathers with regard to the automatic acquisition of parental rights (ibid).

The Commission notes that the applicant's parental responsibility, granted to him by the court in agreement with the mother of his children, was rescinded under section

4(3) of the Children Act 1989. It further notes that a married father cannot be the subject of such an order.

In particular, the Commission notes that notwithstanding the apparently wide definition of "parental responsibility" in section 3(1) of the Children Act it does not necessarily entail contact rights, as is evidenced by the applicant's position after those rights had been rescinded. The Commission recalls that in its 1986 report the Law Commission considered that, if courts were unable to rescind parental responsibility orders when this is found to be in the best interest of the child, they would be reluctant to make such orders and mothers would be more likely to oppose their provision. Moreover, the Commission recalls that parental responsibility may be granted again should a further request be made by the applicant.

Having regard to the margin of appreciation accorded to Contracting States, the Commission, therefore, considers that the difference in treatment between married and unmarried men with respect to the rescission of parental responsibility has an objective and reasonable justification. As a result, no appearance of a violation of Article 8 in conjunction with Article 14 of the Convention is disclosed.

b. Discrimination on grounds of sex

The Government submit that any difference of treatment that may be found to exist on grounds of sex has a reasonable and objective justification. The applicant disagrees.

The Commission recalls that the Children Act does not make provision for the parental responsibility of an unmarried mother to be rescinded. Thus it gives rise to a difference in treatment between unmarried mothers and fathers.

The Commission recalls that, according to the Convention organs' case-law, an unmarried mother is entitled under Article 8 of the Convention to automatic recognition of her child's filiation (Marckx judgment, op. cit., pp. 18-21, paras. 38-43). However, the Commission has considered compatible with the Convention a system whereby the rights of unmarried fathers concerning care or custody over their children, albeit mitigated by the possibility of being granted access to a court, are more limited than those of an unmarried mother (cf. No. 9639/82, Dec. 15.3.84, D.R. 36, p. 130).

In these circumstances, the Commission must consider that a difference in treatment between unmarried mothers and fathers with respect to the rescission of parental responsibility cannot give rise to an appearance of a violation of Article 8 in conjunction with Article 14 of the Convention.

The Commission consequently finds that both complaints made by the applicant under Article 8 in conjunction with Article 14 of the Convention are manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber