AS TO THE ADMISSIBILITY OF

Application No. 17071/90
by W.
against the United Kingdom

The European Commission of Human Rights sitting in private on 7 January 1991, the following members being present:

MM. C. A. NØRGAARD, President
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. DANELIUS
Sir Basil HALL
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. A.V. ALMEIDA RIBEIRO
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 1990 by W. against the United Kingdom and registered on 24 August 1990 under file No. 17071/90;

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 resident in S. H. She is represented by Mr. S.G. Lesson, a solicitor practising in South Harrow. The facts as submitted by the applicant may be summarised as follows.

The applicant is mother of three children, J. born on 25 November 1979, D. born on 18 March 1981 and R. born on 14 May 1983. Following separation and divorce from her husband, the applicant had custody of the children. The applicant experienced problems with her ex-husband and was granted a non-molestation order and exclusion order against him by the Court. Her ex-husband was also committed to prison for 28 days for breach of these orders. The applicant's ex-husband continued to enjoy access visits in respect of J. and D.

On 31 May 1986, during an access visit, the applicant's ex-husband took J. and D. to hospital alleging that they had been hit by the applicant. The same day J. and D. were made the subject of a Place of Safety Order by the local authority (London Borough of Harrow) as a result of bruising which the applicant said could only have been caused as a result of the children fighting together and falling over. The consultant paediatrician took the view that J.'s bruising had been inflicted in a non-accidental manner: he was uncertain about the

injuries to D.

On 4 June 1986, the local authority held a case conference. The applicant had asked to attend but had been refused permission. She was allowed to make written submissions. Following the case conference, the applicant's children were returned home, but all three children's names were placed on the Child Abuse Register, a record which is available to certain public bodies. The record of J. read:

> "3. Nature of injury and by whom inflicted, whether child abuse has been substantiated: bruise on back and forehead, graze on side of nose, near eye (black eye), inflicted by mother. Child abuse substantiated."

The applicant considered that there had been a breach of natural justice since she had not been present at the case conference nor been able to refute any allegations made against her at that conference in respect of both the incidents in question and previous history of the family. For example, it was mentioned at the conference that J. had previously been on the Child Abuse Register, a fact of which the applicant was ignorant and other criticisms had been made concerning her care of her children. She instituted proceedings for judicial review in seeking to quash the decision to place her children's names on the register.

Leave was granted on 2 October 1986 by the High Court. The application for judicial review was heard before the High Court on 25 November 1988. The applicant was represented by counsel and solicitor. Following the hearing, the judge held that the failure to invite the applicant to attend the case conference could not be considered unfair or unreasonable in the circumstances of this case, when the local authority had before it the applicant's account of the bruising given to the consultant paediatrician and her written submissions. He therefore dismissed the application.

The applicant appealed to the Court of Appeal. Following a hearing on 28 July 1989, at which the applicant was represented by counsel, the Court of Appeal held that neither the procedure followed nor the result offended the requisite principles of fairness. It emphasised that entry on a register constitutes neither a finding of fact, even less a finding of guilt and dismissed the appeal. Leave to appeal to the House of Lords was refused on 14 February 1990.

RELEVANT DOMESTIC LAW AND PRACTICE

Both case conferences and abuse registers are non-statutory procedures utilised by local authorities in fulfilling their statutory responsibilities to promote the welfare of children (see e.g. Section 18 of the Child Care Act 1980) and to make enquiries where information is received which suggests that there are grounds for bringing care proceedings (Section 2 of the Children and Young Persons Act 1969).

In a draft guide published by the Department of Health and Social Security to advise local authorities (Child Abuse: Working Together. A guide to arrangements for interagency co-operation for the protection of children) case conferences are described as follows:

"2.16 Case conferences are an essential feature of interagency co-operation. They provide a forum for the exchange of information between professionals involved with the child and family (see paragraphs 2.23 to 2.28) and allow for interagency, multidisciplinary discussion of:

(a) allegations or suspicions of abuse;
(b) the outcome of investigation;
(c) assessments for planning;

(d) an action plan for protecting the child and helping the family; and
(e) reviews of the plan.

...

2.17 For reasons of both efficiency and confidentiality the number of people involved in a case conference should be limited to those with a need to know and a contribution to make to the tasks involved.

...

2.18 A case conference is an inter-professional meeting but on occasion it may wish to invite a non-professional who is working with the child or family; for example, foster parents or volunteer workers. In this event, the key worker or the professional most closely involved with the non-professional should undertake to brief him or her beforehand about the purpose of the conference, the duty of confidentiality and the primacy of the child's interests over that of the parents if a conflict of interest arises.

...

2.24 From the outset, it is important that parents or carers are kept fully informed about the basis of an investigation or intervention. They need to know the reasons for professional concern, the statutory powers, duties and roles of agencies involved and the changes in the family's situation which the agencies consider necessary or desirable in the interests of the child. Openness and honesty and the ability of professional staff to confront parents with reality are an essential basis on which to build a foundation of understanding that may lead to change.

2.25 The key worker and other professionals, individually and jointly, will need to decide how best to involve parents in assessment, planning and review. It may be helpful for the key worker and one or more members of the core group to meet as a group with parents from time to time in the course of work with the family. Such meetings, however, should be clearly distinguished from formal interagency case conferences. It is not appropriate for parents to attend the latter which are professional meetings focused on the details of interagency co-operation to protect the child and plan for the future. It is important, however, that case conferences, wherever possible, are given clear and up-to-date accounts of the views and wishes of parents and other close relatives. ..."

COMPLAINTS

The applicants complains of a breach of Article 6 para. 1 of the Convention. She submits that she was deprived of a fair hearing since she was not informed in advance of the allegations to be made in respect of her care of her children, in particular, the alleged assault on 31 May 1986 or to be present at the case conference.

The applicant also complains that the above matters constituted a violation of her right to respect for her family life guaranteed under Article 8 of the Convention.

THE LAW

1. The applicant complains that she did not receive a fair

hearing at a case conference held by the local authority since she was not informed in advance of the allegations to be made or allowed to be present. She invokes Article 6 para. 1 (Art. 6-1) of the Convention, which, in its first sentence, provides:

"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 notes that the above provision of the Convention guarantees to everyone a fair hearing in the determination of his civil rights and obligations or of a criminal charge against him. The Commission must therefore consider firstly, whether a right was at all involved in the present case and, if so, whether that right was a civil right within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention and secondly, whether there was a criminal charge.

The Commission notes that, generally speaking, Article 6 para. 1 (Art. 6-1) of the Convention is not aimed at creating new substantive rights which have no legal basis in the State concerned but at providing procedural protection to rights which are recognised in domestic law. It is not, however, decisive whether a particular benefit or expectation is characterised under the domestic legal system as a right since the term right must be given an autonomous interpretation under Article 6 para. 1 (Art. 6-1) of the Convention (e.g. Eur. Court H.R., König judgment of 28 June 1986, Series A No. 27, p. 29, para. 87). In W v. the United Kingdom (Eur. Court H.R., W v. the United Kingdom judgment of 8 July 1987, Series A No. 121, p. 32, para. 73) the Court stated:

"It is true that Article 6 para. 1 (Art. 6-1) extends only to 'contestations' (disputes) over (civil) 'rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for (civil) 'rights and obligations' in the substantive law of the Contracting States (see, amongst other authorities, the Lithgow and Others judgment of 8 July 1986, Series A No. 102, p. 70 para. 192)."

The Commission notes that there is no right in English law for parents to attend case conferences. The Commission also notes that the case conference in question reached the decision to place the applicant's children on a Child Abuse Register, which had no effect on the applicant's continuing custody of the children. The Commission accordingly finds that the case conference did not involve the determination of any of the applicant's civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission also recalls that the applicant was not charged with assault or faced with any criminal proceedings in respect of the incident. It notes the finding of the Court of Appeal, that the decision by the case conference to place the children's names on the register did not constitute a finding of guilt. The Commission therefore finds that no criminal charge was in issue in the case.

It follows that this part of the application must be dismissed as incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also complained that the refusal to allow her to attend the case conference constituted a violation of her right to respect for her family life within the meaning of Article 8 (Art. 8) of the Convention.

Article 8 (Art. 8) of the Convention provides:

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

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 Commission has examined whether the refusal to allow the applicant to attend the conference constituted in itself an interference with the applicant's rights under the above provision. The Commission recalls that the case conference discussed the bruising found on the applicant's children and any further action to be taken by the local authority. The decision taken was to place the children's names on the Child Abuse Register. No decision was taken adversely affecting the applicant's custody or access to her children. Even assuming, however, that the refusal to allow the applicant to attend constituted an interference under Article 8 para. 1 (Art. 8-1) of the Convention, the Commission finds that it was justified under the second paragraph (Art. 8-2) as being in accordance with law and as being necessary in a democratic society for the purpose of safeguarding the health and rights of others, namely, J., D. and R. The Commission notes the fact that the applicant was able in any event to present written submissions. The Commission has had regard also to the fact that the applicant has also not shown that she suffered any prejudice from the inclusion of the children's names on the register and to the finding of the Court of Appeal that the inclusion of names on the register constituted neither a finding of fact nor of guilt.

It follows that this complaint is 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)