AS TO THE ADMISSIBILITY OF

Application No. 21175/93
by Patricia WHEELER
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 30 June 1993, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI

Mrs. M.F. BUQUICCHIO, Secretary to the First 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 26 June 1992 by Patricia Wheeler against the United Kingdom and registered on 20 January 1993 under file No. 21175/93;

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 and Irish citizen born in 1941 and resident in London.

The facts as submitted by the applicant may be summarised as follows.

The applicant and her husband adopted a seven year old daughter M.(born 3.10.75) who had a history of suspected sexual abuse by her natural father.

The applicant alleges that M. exhibited problems of fantasising in respect of which they consulted an educational psychologist. During 1990, behavioural problems became evident (eg lying, stealing, poor school record) and an appointment was made for M. at the Bloomfield Clinic. The applicant notified the family's social worker that M. had alleged that A. the teenage son of the family had sexually abused her. The applicant disbelieved these allegations. M. continued to repeat these allegations. The social worker considered them credible and child protection procedures were commenced.

A. was arrested by the police and interviewed. No charges were brought and A. was released. The social services of the local authority

were concerned at the difficult situation developing between M. and the applicant (the applicant had allegedly told M. at one point that she could not return home unless she made a written statement for her) and in particular the need for M. to receive counselling.

The applicant who had informed the social services that she no longer intended to co-operate with them instituted wardship proceedings on 9 November 1990 on the basis that M. required protection from the local authority who were threatening to remove her from her parents' care for further unnecessary enquiries which could possibly damage her. On 5 December 1990 M. was made a ward of court.

On 26 February 1991, the High Court committed M. to the care of the local authority who had leave to place her in residential accommodation. This ex parte application was made in response to M. placing herself voluntarily in the care of the local authority and refusing to go home. M. was placed initially in a residential children's home. The applicant was granted reasonable access to be supervised if M. wished.

The applicant was concerned that M. was in moral danger in the home due to lack of proper supervision and made statements to the local press. On 7 March 1991 the High Court on ex parte application by the local authority issued an injunction to restrain anyone from publishing or broadcasting information identifying M., her address, educational establishment etc. An article later appeared in the press referring to the case of an unnamed minor and to the allegations of a lack of proper supervision.

In November 1991 the applicant applied for the wardship to be discharged. The social services applied for a care order in respect of M.

During this period and until March 1992, the applicant was not informed of the address of the foster carers of M. though she was given the telephone number and able to correspond through the social services department.

The matter came before the High Court on 11 February 1992. The applicant was present but not represented by counsel. The Official Solicitor acting as guardian ad litem for M. had made a report to the court in which he found it difficult to envisage M. returning home in view of her troubled relationship with the applicant. The attached psychiatric report doubted that M. had accepted her adoptive parents as parent substitutes. The judge expressed doubts whether the local authority had proved its case for a care order and commented that they could not have a care order merely because the parents were impossible. He adjourned the case briefly. Following the adjournment the social services announced that they abandoned the application for a care order and reached agreement with the applicant on a draft consent order. The judge proceeded to order by consent that M. remain a ward of court, that she continue to reside with her foster mother, that the applicant have reasonable access subject to M.'s wishes, that M. be at liberty if she wished to return home for staying access or for a trial period and that M. receive such counselling as might be arranged by the social services in consultation with the Official Solicitor.

The matter came back before the judge on 27 March following a dispute by the applicant as to the meaning of the consent order and her complaint that the social services were counselling M. not to go to see her parents. The judge clarified that he had not given care and control to the applicant though she continued to have parental responsibility within the meaning of the Children Act 1989. He referred to letters written to the Official Solicitor by M. in which she asked him to stop her parents' behaving as they do and stating that they never listened

to her and that she refused to go to their house since they always twisted her words round. To put the matter beyond doubt the judge gave interim care and control to the local authority.

COMPLAINTS

The applicant complains under Article 8 of the Convention of the unjustifiable removal of M. from their home, the prevention of private access and correspondence with her, the arrest of A., the invasions of family privacy resulting from the involvement of the social services and police and the compulsory psychiatric examinations of M.

The applicant complains under Article 6 of the Convention that she did not attend the ex parte hearing of 26 February 1991 when M.'s removal into care was ordered and also that M. did not attend.

The applicant complains under Article 10 of the Convention of the injunction issued by the Court which prevented all information concerning the case from reaching the public domain.

The applicant further complains that she has no effective remedy in respect of her complaints.

THE LAW

1. The applicant has complained in the context of Articles 8 and 6 (Art. 8, 6) of the Convention that M. was unjustifiably removed into care in an ex parte procedure at which she and M. were not present.

The Commission however is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision as under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case the applicant did not appeal against the ex parte order or apply to the High Court for the order to be set aside and therefore has not exhausted the remedies available to her under English law. Moreover an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the remedies at her disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and these complaints must in this respect be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant has also complained under Article 8 (Art. 8) of the Convention about the intrusions into her family life occasioned by the actions of the police and social services, refusal of private access and correspondence and the compulsory psychiatric examinations of M.

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 recalls that the involvement of the police and the social services resulted from very serious allegations made by M. of sexual abuse from a member of the family. Insofar as the subsequent child protection procedures can be said to constitute an interference with the applicant's right to respect for her family life, the Commission finds on the facts of the case that such interference was "in accordance with the law" and "necessary in a democratic society" for protecting the health and rights of M. The Commission further notes that the applicant has not been refused access but that the social services and the courts have given priority to M.'s wishes. The Commission considers that the policy of respecting the expressed wishes of a minor over the age of fifteen has not been shown in the circumstances of this case to be arbitrary or unreasonable.

It follows that these complaints are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains of the injunction issued by the High Court prohibiting the publication of all the facts of the case. She invokes Article 10 (Art. 10) of the Convention which provides as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Commission recalls that the applicant was unable to have the full facts of M.'s case published in the press as a result of the court injunction. It finds that this discloses an interference with her rights under the first paragraph above and has therefore examined whether the requirements of the second paragraph have been complied with.

The Commission recalls that the injunction was issued by the High Court in the exercise of its wardship jurisdiction and that it prohibited the publication of any material which would lead to the identification of M. It did not prohibit the publication of the other facts and details of the case, in particular, the applicant's concern over the lack of proper supervision in the children's home. The Commission concludes that the interference in this case was prescribed by law and justified as necessary in a democratic society for the protection of M.

It follows that this complaint is manifestly ill-founded within

the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. Finally, the applicant complains of the absence of an effective remedy in violation of Article 13 (Art. 13) of the Convention which provides:

> "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."

The Commission recalls however that Article 13 (Art. 13) does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p.23, para. 52).

The Commission finds that the applicant cannot be said, in light of its findings above to have an "arguable claim" of a violation of her Convention rights.

It follows that this complaint must 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.

Secretary to the First Chamber	Acting President of the First Chamber
(M.F. BUQUICCHIO)	(F. ERMACORA)