AS TO THE ADMISSIBILITY OF

Application No. 13477/87
by Margaret and Peter WHITMAN
against the United Kingdom

The European Commission of Human Rights sitting in private on 4 October 1989, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mr. L. LOUCAIDES

Mr. J. RAYMOND, Deputy 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 20 October 1987 by Margaret and Peter WHITMAN against the United Kingdom and registered on 4 December 1987 under file No. 13477/87;

Having regard to:

- reports provided for in Rule 40 of the Rules of Procedure of the Commission;

- the Commission's decision of 7 October 1988 to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits;

- the observations submitted by the respondent Government on 18 January 1989 and the observations in reply submitted by the applicants on 12 April 1989;

Having deliberated;

Decides as follows:

THE FACTS

The first applicant is a citizen of the United Kingdom, born in 1941 and resident in Luton, Bedfordshire. She is a housewife. The second applicant is her son, also a United Kingdom citizen, born in 1971. At the time of lodging the application, he was a student.

The facts, as submitted by the parties, may be summarised as follows:

On 13 March 1987 the second applicant was sent home from his school because of breaches of school discipline, involving his

clothes, a "walkman" radio and rudeness, in full view of over 100 pupils.

The parents were contacted, asked to keep him at home and to make an appointment with the Headmaster and Deputy Headmaster. The first applicant contacted the Deputy Headmaster and requested that her son be allowed to attend school until the appointment could be arranged. She explained that the second applicant had been unwell, which might have explained his rudeness. The Deputy Headmaster replied that this would not be possible because the son's defiance and rudeness had been so serious, but that he could accompany his parents to the proposed meeting arranged for 23 March 1987. The Government state that on 20 March 1987 the first applicant had to be escorted from the school grounds together with three strangers, who had all obviously been drinking alcohol. (This assertion is queried by the first applicant.) The time off school was considered to be a "cooling off" period by the school; it was not a formal suspension. The Headmaster and his Deputy thought that the misbehaviour of the second applicant warranted corporal punishment or suspension from school.

The policy of the local education authority had been to cease corporal punishment in its schools as of July 1985. However, school governors remained responsible for their school's general conduct and head teachers controlled schools' internal organisation, management and discipline, with the power of suspending pupils from attendance. The Governors of the second applicant's school resolved in November 1985 "to retain the use of corporal punishment as an option ... on the basis of full consultation with and consent of parents/guardians in each instance".

At the meeting with the Deputy Headmaster on 23 March 1987 the first applicant explained her opposition to corporal punishment. The Deputy Headmaster then explained that a formal suspension was therefore necessary to be followed by undertakings from the parents and the boy as to his future conduct. This was confirmed in the following letter, dated 23 March 1987, from the Deputy Headmaster to the parents:

> "Further to your visit to school today I have spoken at some length to ... the Headmaster. In view of the fact that you are reluctant for Peter to be punished it is felt that for him to realise the seriousness of his position, the sending home should be made a suspension. I enclose the suspension letter written by (the Headmaster). As you will see from that letter we are going to consider readmitting Peter, but this will involve detentions and a contract, the details to be finalised with you at the meeting on 31 March. I should point out that should Peter repeat such behaviour, it would automatically result in a final suspension.
>
> Can I also ask that you ensure that in the meantime Peter does not come on to school site as he did last Friday. If you require further information please telephone me at school, but not on Wednesday as I have a full teaching commitment."

The accompanying formal letter of suspension from the Headmaster to the parents read as follows:

> "There have been a series of serious incidents on school site whereby, in full view of many other pupils, Peter has repeatedly defied ... his Head of Year and ... (the) Deputy Head. This action has left me no option but to suspend Peter. The Chairman of the School Governors and the Area Education Officer have been informed. Will you please attend school on Tuesday 31 March at 9.30 am,

bringing Peter with you at that time, when we can discuss his readmittance."

The second applicant and his father attended the meeting on 31 March 1987. The former showed himself to be very uncooperative and abrupt. He did not express a wish to return to school. It was agreed between the father and the Headmaster that the suspension would continue, that the father would try to persuade the boy to change his attitude and then contact the school when he was ready to return and give an undertaking concerning his future behaviour.

The parents did not contact the school and they were visited by a local authority education welfare officer on 1 May 1987, who explained the seriousness of the son's continued absence, which could result in the parents' prosecution for failing to ensure his attendance unless the matter were resolved quickly. The parents asked if home tuition could be arranged for the boy, but they were informed that this could not be provided. A further meeting was arranged for 13 May 1987, but the son was not at home by the time the education welfare officer arrived. The officer advised the first applicant to make an appointment with the Headmaster or the Principal Education Welfare Officer to resolve matters. A meeting with the latter was arranged for 19 May 1987, when the first applicant was again advised of the seriousness of the situation and the risk of prosecution. A meeting was arranged by the officer between the parents and the Headmaster on 2 June. Due to a distressing local incident the parents were unable to attend. On 5 June 1987 the local education authority commenced the criminal prosecution of the parents for the second applicant's non-attendance at school. On 8 June 1987 the Headmaster wrote to the parents asking them to keep their son off the school site during his suspension. No mention was made in that letter of any end to the suspension.

After three adjournments, the parents' trial was held on 10 September 1987. They had no legal representation, having been refused legal aid because the Magistrates considered the interests of justice did not require it. Suspension from school is not an authorised leave of absence and, therefore, is not a defence for failure to attend school. The education welfare officer informed the court that the second applicant's punishment would involve detentions (compulsory longer school hours to complete extra work), and that the return to school was dependent upon the second applicant making up missed work and accepting a "contract" of good behaviour. The parents contended that their son was by then nearly beyond compulsory school age and did not, therefore, have to attend. The second applicant was approaching his 16th birthday (birth date 17 December 1971). However, he was obliged to stay at school until the end of the spring term by virtue of section 9 of the Education Act 1962, as amended by section 1 of the Education (School-Leaving Dates) Act 1976. The effect of this legislation was to reduce to twice a year the number of dates at which a pupil might leave school. If a child reaches 16 in the five months September to January inclusive he must stay at school until the end of the following spring term (Easter holidays). If he reaches that age in February to August inclusive he must stay at school until the Friday before the last Monday in May of the summer term. The object of the legislation is to ensure that no child has less than three years and two terms in a secondary school and that most children have four years.

Before the Magistrates the parents also queried the second applicant's school attendance record submitted by the local education authority. The first applicant claims that the Magistrates refused to take into account the questions of whether the second applicant was still of compulsory school age, whether the case-law of the European Commission and Court of Human Rights concerning corporal punishment was relevant and whether the reform of the law on school corporal punishment contained in the Education (No. 2) Act 1986, which came in

to force on 15 August 1987, was also relevant to the parents' defence. The Government contend that corporal punishment was not in issue before the Magistrates, there having been no question of such punishment since the first applicant had opposed the idea in March 1987. The parents were convicted for failing to ensure their son's attendance at school and were fined £30 plus £10 costs each, a total of £80. They were also told to return the second applicant to the school.

The family had a meeting with the Headmaster on 15 September 1987. The second applicant was given a further appointment on 29 September. The education welfare officer warned the family that if the second applicant were not to return to school he would be taken into the care of the local authority. The second applicant was given further appointments with the Headmaster.

Care proceedings were instituted on 28 September 1987 by the local authority, a juvenile court hearing being fixed for 19 October 1987. However, the second applicant returned to school on 13 October 1987, his suspension having been terminated after he had given an undertaking of good behaviour. The care proceedings were consequently adjourned to allow the second applicant time to prove that he could sustain his attendance.

On 23 November 1987 the second applicant again defied members of staff. He was interviewed by the Headmaster in the presence of his father on 26 November and he refused to give another undertaking. The Headmaster gave him some further time to consider his position. A second interview took place on 30 November and the second applicant again refused to give any undertaking. He was given a final suspension. During the autumn term the second applicant had attended school 30 out of 48 possible times and he was late for six of those attendances.

The care proceedings were withdrawn on 20 January 1988 as the second applicant was to attend an Intermediate Treatment Centre run jointly by the local Education and Social Services Departments for suspended pupils.

In accordance with the Education Act 1962, as amended by the Education (School-Leaving Dates) Act 1976, the second applicant was able to leave school on 30 March 1988.

COMPLAINTS

The applicants complain of breaches of Article 2 of Protocol No. 1, Articles 4, 5, 6 para. 3 (b) and (c), 7, 8, 14, 17 and 18 of the Convention and Article 1 of Protocol No. 4.

The applicants in effect protest about the suspension of the second applicant from school, and a denial of his right to education, because of the first applicant's insistance on her philosophical convictions concerning corporal punishment, and an abuse of state authority whereby pressure is brought to bear to waive the individual's rights by the institution of criminal and care proceedings. Further complaints are made concerning the refusal of legal aid for these proceedings and for alleged discrimination in the application of the compulsory school age requirements.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 October 1987 and registered on 4 December 1987.

After a preliminary examination of the case by the Rapporteur, the Commission considered the admissibility of the application on 7 October 1988 and decided to give notice of the case to the

respondent Government, pursuant to Rule 42 para. 2 (b) of the Rules of Procedure, and to invite the parties to submit written observations on its admissibility and merits. The Government's observations were submitted on 18 January 1989, to which the applicant replied on 12 April 1989.

THE LAW

1. The applicants have complained that the second applicant was suspended from his school because the first applicant was opposed to his corporal punishment for misbehaviour. They claim to be victims of a violation of Article 2 of Protocol No. 1 (P1-2) of the Convention. The Government contended that once the first applicant's opposition to corporal punishment was established, there was no question of punishing the second applicant in this way. The conditions for him returning to school after the suspension were that he complete a certain number of detentions, make up missed work and that he undertake to behave himself in the future.

Article 2 of Protocol No. 1 (P1-2) to the Convention provides as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Commission has examined the facts of the case and finds that there is no evidence that the second applicant was unjustifiably denied the right to education. It is true that he was suspended from school for misbehaviour. However, after an initial "cooling off" period of 10 days, he could have returned to school, as of 31 March 1987, if he had undertaken to behave himself. This he failed to do until 13 October 1987. He was not faced with the prospect of corporal punishment on his return to school. Within a few weeks of his readmission he broke his undertaking and refused to give another. He was, therefore, again suspended from school until he was no longer of school age on 30 March 1988. The Commission considers that it was reasonable in the circumstances of the particular case for the school to require good behaviour from the second applicant before he could resume his studies. By delaying his promise to behave he was partly responsible for his temporary lack of education. The Commission concludes therefore that the second applicant's complaint concerning a denial of his right to education is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The Commission also finds that there has been no interference with the first applicant's right under Article 2 of Protocol No. 1 (P1-2) to have her son educated in conformity with her philosophical convictions which opposed corporal punishment. It is clear from the facts of the present case that her views were respected by the school authorities and the second applicant was not suspended from school to pressure the applicants to accept corporal punishment, but as an alternative sanction to such punishment for his misbehaviour (cf. Eur. Court H.R., Campbell and Cosans judgment of 25 February 1982, Series A No. 48). The Commission concludes that the first applicant's complaint under Article 2 of Protocol No. 1 (P1-2) is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants have also invoked Articles 4, 5, 6 para. 3 (b) and (c), 7, 8, 14, 17 and 18 (Art. 4, 5, 6-3-b, 6-3-c, 7, 8, 14, 17, 18) of the Convention and Article 1 of Protocol No. 4 (P4-1), particularly in relation to complaints concerning the refusal of legal aid by the Magistrates Court and alleged discrimination in compulsory school age limits. However the Commission considers that these provisions are

not pertinent to the factual circumstances of the application, with the exception of Articles 6 and 14 (Art. 6, 14) of the Convention. Moreover, Protocol No. 4 (P4) has not been ratified by the United Kingdom. It thereby incurs no liability thereunder.

3. Insofar as the first applicant has complained of a breach of Article 6 para. 3 (b) and (c) (Art. 6-3-b, 6-3-c) of the Convention regarding a refusal of legal aid by the Magistrates Court, the Commission notes that the first applicant made no attempt to appeal to the Crown Court on the basis that her trial and conviction by the Magistrates were unfair and to apply for legal aid for such an appeal. The Commission is therefore unable to examine whether the present case discloses a breach of Article 6 (Art. 6) of the Convention because she has failed to exhaust domestic remedies. Accordingly this aspect of the case must be rejected under Articles 26 (Art. 26) and 27 para. 3 (Art. 27-3) of the Convention.

4. Finally insofar as the applicants have complained of alleged discrimination in relation to the compulsory school age, certain sixteen year olds having to stay on at school for one or two terms longer than others, the Commission recalls that Article 14 (Art. 14) of the Convention guarantees freedom from discrimination in the securement of Convention rights, and that, whilst Article 2 of Protocol No. 1 (P1-2) secures the right to education, it does not explicitly guarantee a right not to be educated. This latter element is essentially the applicants' grievance because they claim that once the second applicant had reached his 16th birthday on 17 December 1987 he should have been able to cease compulsory schooling and, consequently, all enforcement proceedings should also have ceased.

The Commission notes that indeed the enforcement proceedings were terminated on 20 January 1988 shortly after the second applicant's 16th birthday, when the care proceedings were withdrawn with the second applicant's attendance at an Intermediate Treatment Centre for suspended pupils until 30 March 1988. It also notes that the object of the relevant legislation (the Education Act 1962 as amended by the Education (School-Leaving Dates) Act 1976) was to ensure secondary education and training for adolescent pupils for at least three years and two terms, up to four years. The Commission leaves open the question of the extent to which the Convention may protect a minor from compulsory schooling, because it finds no evidence in the case-file to suggest that the Education Acts 1962 and 1976 lacked an objective or reasonable basis or were discriminatory within the meaning of Article 14 (Art. 14) of the Convention (cf. Eur. Court H.R., Belgian Linguistic judgment of 9 February 1967, Series A no. 5, pp. 33-35 paras. 9 and 10). The Commission concludes that the applicants have not suffered any discrimination in the securement of their Convention rights. It follows that this aspect of the case is manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(J. RAYMOND) — (C.A. NØRGAARD)