L.F. *v.* Ireland

AS TO THE ADMISSIBILITY OF

Application No. 28154/95
by LF
against Ireland

The European Commission of Human Rights (First Chamber) sitting in private on 2 July 1997, the following members being present:

Mr. M.P. PELLONP��, Acting President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. B�K�S
G. RESS
A. PERENIC
C. B�RSAN
K. HERNDL
M. VILA AMIG�
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 10 January 1995 by LF against Ireland and registered on 7 August 1995 under file No. 28154/95;

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, a male to female transsexual, was born in 1947 and was registered as a male at birth. She holds both Irish and United Kingdom passports and is resident in Co. Kildare, Ireland.

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

A. Particular circumstances of the case

The facts as submitted by the applicant may be summarised as follows. The applicant married AF on 28 September 1977. They had two children, A and B, born on 16 August 1978 and 18 October 1980, respectively. Following recurrent eating difficulties and gender

related illness the applicant collapsed and was hospitalised in August 1989. She began gender re-assignment treatment on 6 September 1989. By March 1991 the applicant was completely in role as a woman. Following medical assessment of the applicant's condition, a grant was approved by the Eastern Health Board for corrective genital surgery. This surgery was carried out in England on 25 July 1992.

1. Birth Certificate

On 5 December 1993 the applicant's solicitors wrote to the General Register Office as regards amending the applicant's birth certificate in light of her transsexualism and gender re-assignment surgery. On 17 December 1993 the Assistant Registrar General responded that:

> "The entry in the birth register is the record of an event; it is thus confined to the facts relating to the circumstances of the birth at the time of the birth in question. The birth entry is not, nor was it intended to be, a personal record which would be updated to take account of each significant change in the life history of the subject. For example, when a child is adopted, no change is made in the relevant entry in the register of births. Similarly when a person marries, his or her birth entry is not annotated in any way.
>
> The format of an entry in the register of births requires the recording of the sex of the Child in Column 4. For obvious reasons the genital characteristics of the child would be used at birth to determine sex and a determination on this basis would be reflected in column 4 of the relevant birth entry. ...
>
> <Gender reassignment surgery and related hormone and other treatment>, however, has no bearing on the facts of the birth and accordingly there would not appear to be any scope for an amendment to the relevant entry in the register of births.
>
> I regret that we cannot accede to your client's request in this matter."

By letter dated 26 September 1994 the Ombudsman indicated that he was satisfied that he could not recommend a change of the decision regarding the applicant's birth certificate, the Ombudsman not considering that it would be appropriate to alter the practice of determining the gender of a baby on the basis of genital characteristics. Letters dated 5 January 1995 and 10 May 1995 from subsequent Ombudsmen confirmed the original response from that office and noted that to accede to the applicant's wish would require a change in legislation.

A letter dated 17 January 1996 from the General Register Office essentially repeated the contents of that office's earlier letter as regards amendments to birth certificates.

On 11 July 1996 the Free Legal Advice Centre ("FLAC") indicated to the applicant its agreement to take up the issue of the birth certificate on her behalf. By letter dated 3 December 1996 FLAC made a formal application to the General Register Office requesting that the birth register be amended on the basis that, as a result of a failure to detect the applicant's disability at the time of her birth and an incomplete understanding of the applicant's condition, her sex was "erroneously" recorded as male. FLAC noted that neither the relevant

legislation nor the regulations made thereunder provide for any one specific method of determination of the sex of a child. Proceedings for judicial review (on the basis of a breach of the applicant's constitutional rights to privacy, dignity, equality and the right to marry) were threatened in the event of a refusal to amend the birth certificate.

The General Register Office replied by letter dated 11 February 1997 pointing out, in addition to the explanations contained in previous letters, that the format of the entry in the register of births is prescribed by section 30 of the Births and Deaths Registration (Ireland) Act 1863 and that the schedule to that Act requires the recording of the sex of the child in column 4.

On 14 April 1997 the applicant was granted leave to take judicial review proceedings in relation to the refusal by the General Register Office to amend her birth certificate. The Attorney General is a respondent to those proceedings since the applicant challenges, as an alternative to the judicial review submissions, the constitutionality of the relevant parts of the Births and Deaths Registration (Ireland) Act 1863.

The applicant has submitted an invitation from the adult education centre of a college dated 29 September 1995 to attend a conferring ceremony, the relevant acceptance form indicating that the form was to be filled out "including your full Christian name as stated on your Birth Certificate". A letter dated 12 February 1996 from the Training and Employment Authority confirmed to the applicant that she was being offered training in a course and that she should bring with her when attending, inter alia, her birth certificate.

By application made in the United Kingdom dated 18 March 1991 the applicant changed her name by deed poll and she has held a British passport in her new name and recording her female sex since 23 August 1991. On 23 November 1993 the Registrar of the Irish High Court confirmed that the Irish Deed Poll was enrolled on 16 November 1993 and the applicant has held an Irish passport in her new name and recording her female sex since 15 February 1993.

2. Judicial separation, access to children and the family home

Prior to April 1991 AF and the applicant separated and agreed, inter alia, the terms and conditions of the applicant's access to the children. AF requested, and the applicant agreed, that the applicant would not disclose her transsexualism to her children. The applicant and AF had attended a child psychiatrist who advised, pending further investigation of the matter, that the children should not be informed of the situation. On 24 April 1991 the applicant's wife issued judicial separation proceedings.

On 13 December 1991 AF and the applicant agreed to settle the judicial separation proceedings and the settlement was confirmed by Circuit Court order of the same date. The Circuit Court order submitted by the applicant records the parties' agreement to a judicial separation, that AF be granted custody of the children and exclusive right of residence in the family home, that the applicant was excluded from the family home and undertook only to enter the house on the basis of an express wish from AF, that the applicant would have access to the children each Sunday and on Sunday night once a month with the applicant having sole access to the children one weekend a month, that the question of maintenance be adjourned until the applicant was

employed and that neither party would commit any act to jeopardise the value of their respective joint shares in the family home.

That order also records, as a term of the settlement, that the applicant agreed to act, behave and dress as a male during access visits. However, the applicant claims that the Circuit Court order recording the settlement was fraudulently amended to include this condition. However, the applicant's solicitor's letter dated 21 March 1994 points out that the applicant's solicitor (having consulted with counsel who acted for the applicant in December 1991) considered that the Circuit Court order represented the sense of the settlement terms and that at no stage was it envisaged that the applicant would attend for access dressed as a woman.

The applicant was due to see her children a few days after AF was informed of the applicant's gender reassignment surgery (which surgery took place on 25 July 1992). Since the applicant's access visit was imminent, AF felt compelled to explain the applicant's position, her treatment and the gender assignment operation to A (then 14 years old) and B (then 12 years old). AF later reported (to the consultant psychiatrist referred to below) that A reacted badly and expressed a lot of anger at the applicant and B cried and seemed not to know what to say. Accordingly, AF contacted her solicitors and said that the children did not wish to see the applicant as they were too upset.

A letter dated 19 October 1992 from the AF's lawyers rejected the applicant's allegations of insensitivity as regards the children being told about her gender re-assignment surgery, made reference to a letter which the applicant had sent to her children which apparently upset the children greatly and noted that the children did not want to hear or see from the applicant at that point in time.

On 1 July 1993 the applicant turned up at the family home. The applicant claims that she was dressed in a gender neutral way and but AF alleges that she was dressed in female attire, wearing a skirt and dressed in pink. The police were called to the house by AF. By letter dated 12 July 1993 the applicant's solicitor informed the applicant that AF was threatening to apply to re-open the judicial separation proceedings including the access issue, that there was a serious risk that a court would find that the applicant valued her expression of femininity more highly than access to her children and would formally deny her access, that she was at risk of being barred from the family home and that AF would probably request the court for a transfer of the applicant's interest in the family home in default of maintenance. Accordingly, and in order to avoid a full reconsideration of the separation agreement, the applicant was asked by her lawyer to give an undertaking not to approach the family home.

By letter from AF's solicitors dated 14 October 1993 the applicant's solicitors were informed that the applicant had again called to the family home without prior notice or the consent of AF. B had opened the door to the applicant had become upset and hysterical. Having left the house the applicant returned twenty minutes later wishing to speak to B again. It was pointed out that the applicant had given B a birthday present and some material on gender re-assignment, that the applicant was in breach of the existing Circuit Court order of December 1991 and that that order had been furnished to the police so that if such events re-occurred a court application would be made to find the applicant in contempt of court.

By letter dated 1 November 1993 the applicant's solicitor was

informed that AF had obtained an interlocutory barring order from the Circuit Court on 29 October 1993 on an ex parte basis barring the applicant from the family home pending the outcome of the current proceedings (due for hearing in December 1993) which had in the meantime been issued for a re-consideration of the separation agreement. (The applicant's current name was employed in the title of those proceedings). On 3 December 1993 the applicant applied by way of a notice of motion to the Circuit Court to set aside the barring order indicating that the applicant had undertaken not to approach the family home.

A report dated 10 May 1994, prepared by a consultant child psychiatrist instructed on the applicant's behalf for the purposes of the on-going proceedings, advised on the question of access by the applicant to her two children. For the purposes of the report the applicant, AF and the two children were interviewed. The consultant considered that the applicant's opinion, that if she were able to meet with the children and explain to them the reasons for the surgery everything would resolve itself and there would be regular contact between them, was naive. He noted that neither of the children had any preparation for the surgery which had deprived them of a father. He did note that it had been required by AF, and the applicant had agreed, that no such preparation or discussion would take place. The applicant's gender reassignment has been a momentous event in the children's lives, they not only having lost their parents' marriage but their father as well.

The consultant noted that the children were unable to countenance even the most non-threatening communication with the applicant and, consequently, he could not recommend that there should be access between the children and the applicant adding that both of the children did not wish to see the applicant, were clear about this and were quite independent children. He did not consider that the children were being overly influenced by their mother in making that decision, the only influence which he noted was that the children need to maintain a good relationship with AF during a time of such flux and change occasioned by their parents' separation and their father's transsexual surgery. He concluded by stating that the children demonstrated a strong attachment to the father they knew, and were distressed by this loss. It would, in his view, take some time before they could adjust to the person their father had become, that this would in time come about and that in the future they would be in touch with their father and the respective relationships would re-commence.

On 20 May 1994 the Circuit Court, having heard submissions from counsel for the parties, made no order as to access and ordered that the applicant's interest in the family home be transferred to AF pursuant to the provisions of the Judicial Separation and Family Law Reform Act 1989 in the absence of the provision of maintenance by the applicant and that the barring order continue until further order. On 14 October 1994 the High Court, having heard counsel for both parties, confirmed the order of the Circuit Court of 20 May 1994 adding that the applicant was to be restrained from being within one mile of the family home.

The applicant received a letter dated 17 January 1996 from the Mullingar County Registrar's office addressing her as "Mr." and prior to that date and thereafter in January 1996 she received letters from the same and other Country Registrar's offices addressing her by her current name, as "Dr." and as "Madam".

By letter dated 1 February 1996 the applicant's solicitors informed the applicant that the application for legal aid (in order to obtain counsel's opinion on the prospects of re-opening the proceedings in order to renew access and to have the applicant's equity in the house restored) had been refused on the basis that it would not be in conformity with the purpose and terms of the legal aid scheme to grant it, that the applicant had as a matter of law no reasonable grounds for taking, defending or being a party to proceedings, that the applicant had not made a case for being granted a certificate which is such as to warrant the conclusion that she was reasonably likely to succeed and that, having regard to all the circumstances of the case, it would not be reasonable to grant legal aid. By letter dated 1 May 1996 the applicant's lawyer confirmed the rejection, by the area committee of the legal aid board, of the applicant's appeal against the refusal of further legal aid.

3. Employment

From February 1987 the applicant was employed as a dental surgeon in a temporary capacity by the Eastern Health Board. On 22 October 1990 she received a letter from her employer informing her that it was not proposed to continue her employment after 30 November 1990. No reason was given for the termination of her employment, the termination was the subject of discussion and correspondence with her legal representatives and an agreed settlement was reached. On 17 September 1991 the applicant was refused unemployment benefit. On 8 November 1991 the health board furnished the applicant with a reference which simply confirmed the period and nature of the applicant's employment.

COMPLAINTS

The applicant complains under Article 8 of the Convention about the denial of a birth certificate recording her female sex.

She also complains under Articles 6 and 8 about the denial of access to her children, the transfer to her wife of her interest in the family home and about the related proceedings.

The applicant also invokes Article 3 of the Convention as regards the failure by the courts to acknowledge her female gender.

The applicant further complains under Articles 8 and 10 of the Convention about the loss of her job with the Eastern Health Board and about the latter's failure to give her an appropriate employment reference.

She also complains that she was denied unemployment benefit. She also invokes Article 14 of the Convention in conjunction with all of the above Articles claiming that she was discriminated against because she is a transsexual.

Finally, the applicant invokes Article 13 of the Convention claiming that she has no effective domestic remedies in respect of the above complaints.

THE LAW

1. The applicant complains under Article 8 (Art. 8) alone and in

conjunction with Article 14 (Art. 8+14) of the Convention about the denial of a birth certificate recording her female sex. She submits that she was born with Gender Identity Disorder (transsexual syndrome) and that her birth certificate should acknowledge her female gender. She argues that a birth certificate is required for certain matters including employment, third level education, passport applications and for marriage.

The Commission recalls that, in a legal system which provides constitutional protection of fundamental rights, it is incumbent on the aggrieved person to test the extent of that protection and, in a common law system, to allow the domestic courts to develop those rights by way of interpretation (No. 24196/94, Dec. 22.1.96, D.R. 84-A, p. 72). The Commission also notes that the applicant has recently initiated judicial review and constitutional proceedings in relation to the refusal to amend her birth certificate, which proceedings have not as yet terminated. Moreover, the Commission considers that an examination of the case, as it has been submitted, does not disclose the existence of any special circumstances which would absolve the applicant from exhausting the domestic remedies now being pursued by her (No. 14556/89, Dec. 5.3.91, D.R. 69, p. 261).

Accordingly, the Commission considers that the applicant has not, as matters stand, exhausted domestic remedies within the meaning of Article 26 (Art. 26) of the Convention and these complaints are, therefore, inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also complains under Articles 6 and 8 (Art. 6, 8) alone and in conjunction with Article 14 (Art. 6+14, 8+14) of the Convention about the denial of access to her children, about the removal of her interest in the family home and about the relevant proceedings in those respects.

The applicant makes numerous submissions in this respect alleging widespread fraud, collusion and bias. She submits that she did not have a fair or unbiased hearing at any time because her name and medical condition were ridiculed by the Circuit and High Courts on 20 May and 14 October 1994, respectively, that the Circuit Court order of 13 December 1991 was fraudulently altered (to add the condition that the applicant would at all times in the presence of the children act, behave and dress as a male) and that her then and subsequent legal representatives colluded in covering up that fraud, that she had no access to the original agreement which she had signed in December 1991 or to a psychiatric report which was used against her in the domestic proceedings. She further alleges that the child psychiatrist who completed the report dated 10 May 1994 was biased as were her legal representatives. She also argues that she has been refused further legal aid unless she comes up with "new circumstances". Finally, she claims that the barring order was obtained by illegal procedures and on the basis of dishonesty and situations which did not happen.

(a) Article 8 (Art. 8), insofar as relevant, provides as follows:

> "1. Everyone has the right to respect for his ... family life, his home ...
>
> 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."

The Commission's task is to establish whether there has been an interference with the rights guaranteed under Article 8 (Art. 8) of the Convention and, if so, whether it is justified under Article 8 para. 2 (Art. 8-2) of the Convention, namely, whether any such interference is "in accordance with the law", pursues one or more of the legitimate aims set out in Article 8 para. 2 (Art. 8-2) and whether it is "necessary in a democratic society" for one or more of those reasons.

As far as access is concerned, the Commission notes at the outset that prior to the separation proceedings being issued, the parties had agreed between themselves the terms and conditions of access. The subsequent judicial separation proceedings were definitively settled insofar as they related to the terms and conditions of access in December 1991 by the applicant and AF. The purpose of the Circuit Court order was to give the settlement terms the force of a court order. The Commissions considers that the later re-opening of, inter alia, the access issue pursuant to the applicant's actions in 1993 does not affect the final nature of the December 1991 Circuit Court order for the purposes of the time-limit set down by Article 26 (Art. 26) of the Convention. Accordingly, the Commission considers that, insofar as the December 1991 Circuit Court order involves an interference by a public authority in relation to the applicant's access to her children, any complaint in that respect has been introduced outside of the six-month time-limit set down by Article 26 (Art. 26) of the Convention, the application having been introduced on 10 January 1995. This complaint is therefore inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention. The Commission has referred below to the December 1991 Circuit Court order insofar as it is relevant to later proceedings.

However, the Commission considers that the decisions of the domestic courts in October 1993, May 1994 and in October 1994 to, inter alia, impose and maintain a barring order against the applicant, constituted an interference with her right to respect for her family life as guaranteed in Article 8 para. 1 (Art. 8-1) of the Convention since the purpose and effect of those decisions was to deny the applicant access to her children (Eur. Court HR, Eriksson v. Sweden judgment of 22 June 1989, Series A no. 156, pp. 27, 59).

As to whether the decisions as to the barring order were lawful, the Commission notes that the applicant claims that the barring order was obtained by illegal procedures and on the basis of dishonesty and misrepresentation of the facts. As noted above, the applicant alleges that the Circuit Court order of 13 December 1991 was fraudulently altered to add the condition that she would at all times in the presence of the children act, behave and dress as a male. She also submits that she was, in any event, dressed in a gender neutral way when she visited the family home in 1993. The Commission notes that the applicant's then and subsequent legal representatives have confirmed their view that the Circuit Court order reflected the terms of the settlement between the parties. Although the applicant alleges collusion on the part of those legal representatives in covering up the alleged fraudulent alteration of the Circuit Court order, the Commission considers these allegations unsubstantiated. Having reviewed the documents submitted, the Commission does not consider that the applicant's submissions demonstrate that the Circuit Court order dated 13 December 1991 reflects anything other than an accurate record of an agreement between the parties as to the conditions for, inter alia, the applicant's access to the children.

As to the applicant's compliance with that Circuit Court order, the Commission considers that the documents submitted by the applicant, including the child psychiatrist's report and both parties' solicitors' letters, do not support her claim that she was dressed in a gender neutral manner during her visits to the family home in 1993. The Commission further considers that the applicant has not substantiated in any way her allegations of bias on the part of that child psychiatrist. In any event, the Commission notes that, apart from the issue of the applicant's dress and comportment during those visits, the applicant did not receive a request to attend at the family home, a condition of the December 1991 Circuit Court order which the applicant does not dispute. Furthermore, it is also apparent from the documents submitted by the applicant, that the Circuit and High Court exercised its jurisdiction in the interests of the applicant's children.

Accordingly, the Commission finds the domestic courts, in imposing and maintaining the barring order, were exercising their inherent injunctive jurisdiction as a result of the applicant's attendance at the family home in 1993 in breach of the Circuit Court order of 13 December 1991 and that the relevant decisions were therefore "in accordance with law" and in pursuit of the legitimate aims of protecting the children's health and rights.

As to whether this measure was necessary within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention, the case-law of the Convention organs establishes that the notion of necessity implies that the interference corresponds to a pressing social need and that it is proportionate to the aim pursued. Furthermore, in determining whether an interference is necessary, the Convention organs take into account that a margin of appreciation is left to the Contracting States who are in principle in a better position to make an initial assessment as to the necessity of given measure (Eur. Court HR, W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 27, para. 59). When determining whether or not the decision refusing access was necessary, the Commission observes that it is not its task to take the place of the competent national courts and make a fresh examination of all the facts and evidence. The Commission's task is to examine whether the reasons adduced to justify the interference at issue are "relevant and sufficient" (Eur. Court HR, Olsson v. Sweden judgment of 24 March 1988, Series A no. 130, p. 32, para. 68).

In the first place, the Commission is cognisant of the position as regards access with which the domestic courts were presented in October 1993 when the first application for a barring order was decided. The applicant's access to her children had, up to that point, been regulated by agreements between the applicant and AF. The Commission has also found that it was the applicant's breach of the December 1991 Circuit Court order by, at the very least, the applicant's attendance without invitation at the family home in 1993 which led to the application for a barring order. The decisions of the courts, initially, on an ex parte basis and, subsequently, after a hearing before the Circuit and High Courts in May and October 1994, respectively at which both parties were legally represented was to impose a barring order and to maintain that order in place until a further order of the court.

Secondly, and while the applicant has not submitted the judgment of the High Court (the last decision on this matter), the Commission has had particular regard to the child psychiatrist's report dated 10 May 1994 which was obtained by the applicant's solicitors on her

behalf for the purposes of the ongoing proceedings in relation to, inter alia, the barring order and in order to advise on the question of access by the applicant to her two children. That psychiatrist concluded that the applicant's view, that if she were able to meet with the children and explain to them the reasons for the surgery everything would resolve itself and there would be regular contact between them, was naive. He noted that the applicant's gender reassignment has been a momentous event in the children's lives and that the children were unable to countenance even the most non-threatening communication with the applicant. He could not recommend that there should be access between the children and the applicant adding that both the children did not wish to see the applicant, were clear about this and were quite independent children. While he was not adverse to the idea of contact in the future, he advised against at that time in view of the children's wishes and position. The Commission has noted above its view of the applicant's allegation of bias against this psychiatrist.

In the above circumstances, the Commission considers that the domestic courts had relevant and sufficient reasons, within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention, to have imposed and maintained in force the barring order against the applicant.

As to the applicant's complaint about the transfer of her interest in the family home and insofar as this gives rise to an interference with the applicant's rights under Article 8 (Art. 8) of the Convention, the Commission notes that the applicant submits that this was unlawful but does not specify in what respect. The Commission recalls that the initial Circuit Court order of December 1991 adjourned the matter of maintenance (and effectively the question of the transfer of the applicant's interest in the family home in default of maintenance) which step the Commission considers was for the applicant's benefit because the applicant was at the time unemployed. Moreover, the Circuit and High Courts, in making and confirming the transfer of the applicant's interest, did so expressly in pursuance of the Judicial Separation and Family Law Reform Act 1989. In addition, the Commission recalls that the transfer of the applicant's interest was made in default of the payment of any maintenance by the applicant. In such circumstances, the Commission is of the view that this decision had a legitimate aim, being the financial provision for the applicant's family, and that it was proportionate in that it constituted an order by a court for the satisfaction of a maintenance obligation which the applicant had not been in a position to otherwise fulfil.

However, the Commission also recalls that there are certain procedural requirements implied in Article 8 (Art. 8) of the Convention in order to ensure effective respect for family life (Eur. Court HR, H. v. the United Kingdom judgment, loc. cit., pp. 27-28 and 59, paras. 87-90 and W. v. the United Kingdom judgment, loc. cit., pp. 28-29, pp. 63-65).

As to the proceedings on the access issue, the Commission notes that the applicant was represented throughout the relevant proceedings, she having been granted free legal aid in that respect. As noted above, the Commission considers the applicant's allegations as regards her legal representatives unsubstantiated. The Commission is satisfied that the applicant was given the possibility of putting forward any views which in her opinion would be decisive for the outcome of the case. The Commission also considers that the length of the overall proceedings in relation to access was not unreasonable and it does not appear that it led to a de facto determination of the access issue by the mere effluxion of time or deprived the applicant of a decision upon the

merits of the case - the proceedings re-opening the access matter issued between July 1993 and October 1993 and the access matter was decided by the courts' decisions on the barring order taken in October 1993, May 1994 and, subsequently, on appeal in October 1994.

As to proceedings in relation to the applicant's interest in the family home, the applicant was also legally represented during all relevant proceedings. The matter of maintenance was expressly left open by the December 1991 Circuit Court order for the benefit of the applicant and once the proceedings issued for a re-consideration of this matter (July to October 1993) the matter was decided, at first instance, by May 1994 and, on appeal, in October 1994.

Accordingly, the Commission considers that the procedural requirements implicit in Article 8 (Art. 8) of the Convention were complied with and that the applicant was involved in the decision-making process as regards access and her interest in the family home to a degree sufficient to provide her with the requisite protection of her interests.

In such circumstances, the Commission concludes, bearing in mind the margin of appreciation accorded to the domestic authorities, that the interferences with the applicant's rights contained in Article 8 (Art. 8) of the Convention, were justified as being "necessary in a democratic society" for the protection of the health and rights of the children. Consequently, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(b) The applicant also invokes Article 6 (Art. 6) as regards the domestic proceedings, which Article, insofar as relevant, reads as follows:

> "1. In the determination of his civil rights ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Insofar as the applicant argues under this Article that the decisions of the courts were wrong, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its constant case-law (see eg. No. 458/59, X. v. Belgium, Dec. 29.3.60, Yearbook 3, pp. 222, 236; No. 5258/71, X. v. Sweden, Dec. 8.2.73, Collection 43, pp.71, 77; No. 7987/77, X. v. Austria, Dec. 13.12.79, D.R. 18, pp. 31, 45). In particular, the Commission recalls that it is not for the Commission to re-assess the factual or legal elements of the case before the domestic courts, given that the decisions taken had, as noted above, a basis in law and were based on relevant and sufficient reasons (see, for example, No. 24604/94, Dec. 6.9.95, unpublished).

As regards her specific submissions as to procedural irregularities, the Commission recalls that its task is to assess the overall fairness of the proceedings as a whole (see, for example, Eur. Court HR, Dombo Beheer B. v. the Netherlands judgment of 27 October 1993, Series A no. 274, p. 19, para. 31).

In the first place, the Commission has commented above on the applicant's allegations as regards her legal representatives, relating to the accuracy of the Circuit Court order of December 1991 and in respect of the child psychiatrist who completed the report dated 10 May 1994. As to her allegation about lack of access to a psychiatric report, the Commission notes that, while the applicant refers to the name of the author of the report, she has not indicated on whose behalf the report was obtained or what use was made in the proceedings of this report.

Secondly and as to the applicant's allegations of bias on the part of the domestic courts due to her medical condition, the Commission recalls that a tribunal must be objectively and subjectively impartial, the subjective impartiality of a judge being assumed unless there is proof to the contrary (see, for example, Eur. Court HR, Padovani v. Italy judgment of 26 February 1993, Series A no. 257-B, p. 20, paras. 25-26). However, the Commission finds no evidence that her name or condition were ridiculed by relevant judges as alleged by the applicant or at all. The Commission also notes, in this respect, that the title of the proceedings which issued in 1993 included her present name. In addition the Commission notes its conclusions at 3. below in these respects. Accordingly, the Commission considers that the applicant has not demonstrated objective or subjective impartiality or bias on the part of the courts.

Thirdly, and as regards the refusal of legal aid for a further re-opening of the access and family home matters, the Commission recalls that Article 6 (Art. 6) of the Convention does not guarantee the right, as such, to free legal aid in civil cases. This Article does guarantee effective access to court for the determination of civil rights but it leaves the choice of the means to be used towards this end to the State and, accordingly, the grant of legal aid may be subject to certain conditions provided this is not arbitrary (No. 10594/83, Dec. 14.7.87, D.R. 52, p. 158). In the present case, the Commission notes that the applicant was legally aided for the judicial separation proceedings which settled in December 1991 and for the re-opening of those proceedings which were finally determined in October 1994. The Commission considers that the refusal of further legal aid, on the grounds outlined by the legal aid board, does not constitute an arbitrary limitation on the applicant's access to court.

Having regard to the proceedings as a whole, the Commission's conclusions at 2(a) above as to the relevant and sufficient reasons of the domestic courts and its conclusions on the specific submissions of the applicant as to the conduct of the proceedings, the Commission concludes that the applicant has not demonstrated that she did not have a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

(c) As to the applicant's complaint under Article 14 in conjunction with the complaints under Articles 6 and 8 above (Art. 14+6+8), the Commission recalls that Article 14 (Art. 14) of the Convention reads 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 recalls that Article 14 (Art. 14) of the Convention protects against a discriminatory difference in treatment of persons in analogous positions, which treatment is considered discriminatory if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the legitimate aim sought to be realised (Eur. Court HR, Darby v. Sweden judgment of 23 October 1990, Series A no. 187, p. 12, para. 31).

However, and in the first place, there is no evidence whatsoever that the applicant's condition was either relevant to or taken into account by the domestic courts when deciding on the applicant's interest in the family home. Secondly, the Commission notes that the over-riding interest in the proceedings relating to the applicant's access to her children was what was considered to be the best interests of the children, that being the core concern in all domestic access cases. Furthermore, the Commission does not find any evidence of treatment contrary to Article 14 (Art. 14) of the Convention as regards the conduct of the proceedings relating to the above-mentioned access and family home matters. Accordingly, the Commission considers that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also invokes Article 3 (Art. 3) of the Convention alone and in conjunction with Article 14 (Art. 3+14) of the Convention as regards the failure by the courts to acknowledge her gender by using "Ms." or "Miss" to address her and by using "Dr." instead. She also refers to a letter from Mullingar County Registrar's office dated 17 January 1996 which addressed her as "Mr.". Article 3 (Art. 3) of the Convention provides as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Even assuming that the applicant's allegations as regards the courts are substantiated, the Commission considers that they show that the courts addressed the applicant in a gender neutral manner and, as noted above, the title of the proceedings issued in 1993 reflected her current name. The Commission also notes several letters written from that same and other County Registrar's offices in the same month addressing the applicant as "Dr.", "Madam" and by her current name. The Commission does not consider that this approach by the courts or a single letter from the a County Registrar addressing the applicant as "Mr." discloses treatment of such a nature or degree as to render it either inhuman or degrading within the meaning of Article 3 (Art. 3) of the Convention (Eur. Court HR, Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162) or a discriminatory difference in treatment within the meaning of Article 14 (Art. 14) of the Convention outlined at 2 (c) above. It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant complains under Articles 8 and 10 (Art. 8, 10) alone and in conjunction with Article 14 (Art. 8+14, 10+14) of the Convention about the loss of her job with the Eastern Health Board. She submits that her employment was terminated without good reason and that she was denied an appropriate employment reference. She also complains that she has been denied unemployment benefit.

However, the Commission notes that the applicant introduced her application to the Commission on 10 January 1995 and that her employment had terminated, the matter was settled and she obtained the relevant employment reference prior to the end of 1991. Accordingly, the complaints as regards her loss of employment and the employment reference, together with the Article 14 (Art. 14) complaint raised in conjunction, have been introduced outside of the six-month time-limit set down by Article 26 (Art. 26) of the Convention and these complaints are therefore inadmissible pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

In addition, and insofar as the applicant submits that the refusal of employment benefit constitutes a continuing violation of the Convention, the Commission recalls that there is no right guaranteed by the Convention to receive financial assistance from the State in order to maintain a certain standard of living (No. 11776/85, Dec. 4.3.86, D.R. 46, p. 251). Accordingly, the Commission considers this complaint by the applicant, and consequently her complaint under Article 14 (Art. 14) raised in conjunction, to be incompatible ratione materiae with the provisions of the Convention. These complaints are therefore inadmissible pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant also complains under Article 13 (Art. 13) that she had no effective domestic remedies available to her in respect of the above complaints. Article 13 (Art. 13) reads as follows:

> "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."

In respect of the complaints made by the applicant under sections 2-4 above, the Commission recalls 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 HR, Boyle and Rice v. the United Kingdom 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.

In respect of the matters raised under section 1, the Commission recalls its finding that the applicant is in the process of exhausting domestic remedies pursuant to Article 26 (Art. 26) of the Convention.

It follows that the applicant's complaints under Article 13 (Art. 13) 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONP[illegible]
Acting President
of the First Chamber