

THE FACTS

The facts of the case may be summarised as follows:

The first applicant is a United Kingdom citizen, born in 1957 and resident at C., Isle of Man. The second applicant was born in 1956. He is equally a United Kingdom citizen and resident at C. on the Isle of Man. Both applicants are represented by Mr. G., Legal Officer of the National Council of Civil Liberties, who is acting under authorities from the applicants, dated 5 and 6 September 1972 respectively. The applicants' parents have given their consent to the bringing of the applications.

From the statements submitted by the applicants it appears that on .. March 1972 they pleaded guilty at C. Juvenile Court, Isle of Man, to unlawful assault occasioning actual bodily harm to one M., a prefect at R.in C., contrary to Section 60 of the Criminal Code 1872. On the same day they were sentenced to strokes of the birch under Sections 8 and 10 of the Summary Jurisdiction Act 1960 (Isle of Man, the first applicant to five strokes and the second applicant to three strokes.

Only the second applicant appealed against his sentence to the Staff of Government Division at the Manx Court of Criminal Appeal. The appeal was heard on .. April 1972 and the Court, after having ordered the applicant's medical examination, dismissed the appeal on the same day. The Court found that the attack on the prefect, who had reported the applicants to the headmaster for taking beer into school, had been very serious and that the sentence was lawful, no question having been raised as to its legality.

The first applicant stated that he did not challenge his sentence as an appeal did not stand much chance of success, his elder brother already having been birched two years earlier.

On .. March 1972 the first applicant received three strokes of the birch, the police doctor examined him and advised the giving of three strokes only. The second applicant received three strokes on .. April 1972. Doctors were present at both birchings.

Complaints

The applicants' complaints were directed against Section 8 of the Summary Jurisdiction Act 1960 (Isle of Man) as well as other sections of the Act and other legislation in force in the United Kingdom, its Islands, Colonies or other territories or possessions to which the Convention applies.

They complained in particular, that

- The corporal punishment imposed on them constituted degrading treatment within the meaning of Article 3 of the Convention;
- such punishment was destructive of family well-being and therefore contrary to Article 8 of the Convention;
- no remedies existed to rectify the violation which was inconsistent with Article 13 of the Convention;
- the punishment was discriminatory within the meaning of Article 14 of the Convention in that it was primarily pronounced on persons from financially and socially deprived homes;
- the violation of Article 3 of the Convention also constituted a violation of Article 1 of the Convention.

The first applicant also alleged a violation of Article 6 of the Convention but did not give any particulars in this respect. This applicant further submitted that Article 26 was not applicable in his case, the scope of which was to determine the compatibility with the Convention of legislative measures and judicial practices in the Isle

of Man. He referred in this respect to Application No. 176/56 (Yearbook, Vol. 2, pp. 174, 184). Furthermore, the undoubtedly lawful sentence was per se degrading treatment contrary to Article 3 against which no remedy could be available, and an appeal against sentence would, in this case, have been no more than an appeal for clemency which was not a remedy to be exhausted under Article 26 (cf. Application No. 458/59, Yearbook, Vol. 3, p. 234). Apart from this, an appeal would have been ineffective, as evidenced by the unsuccessful appeal of the second applicant and in view of the fact that there were no special circumstances justifying a higher court's interference with corporal punishment. Furthermore, the applicant did not wish to prolong the profound mental agony on him and his family occasioned by the delay until the "birching" would have been administered.

Both applicants claimed damages as well as repeal of the legislation concerned. They requested that their applications should be joined.

Proceedings before the Commission

The Commission examined the applications on 19 December 1973 and decided that they should be joined in accordance with Rule 39 of its Rules of Procedure. It further decided that, in accordance with Rule 46, 2 b) of the Rules of Procedure, notice should be given to the Government of the United Kingdom of the applications and that the Government should be invited to submit their observations in writing on the admissibility of the issues under Articles 3 and 14 of the Convention arising in these applications. The Commission considered that it did not require observations in regard to the applicants' complaints under Articles 1, 8 and 13 of the Convention.

The Government submitted their observations on 24 April 1974 and the applicants' lawyer replied on 10 June 1974.

Submissions of the Parties

1. The respondent Government submitted that the whole of the first applicant's application No. 5775/72 was inadmissible for non-exhaustion of domestic remedies and that the applications were manifestly ill-founded on the issue raised under Article 14 of the Convention. On the other hand, the Government did not wish to contest the admissibility of the question whether the punishment by birching inflicted on the applicants constituted degrading treatment within the meaning of Article 3 of the Convention, but reserved their position in this respect to the proceedings on the merits.

Explaining their position in the case the Government first gave an outline of the relevant constitutional law and practice. The Isle of Man was not a part of the United Kingdom, but a dependency of the Crown with its own legislative assembly, courts of law and administrative and fiscal systems. However, the United Kingdom Government were responsible for the Island's defence and international relations and the Crown acted through the Privy Council on the recommendation of Ministers of the United Kingdom Government in their capacity as Privy Counsellors. The Home Secretary was the Privy Counsellor charged with prime responsibility for Island affairs.

The legislative assembly of the Isle of Man was the Court of Tynwald. It consisted of the Lieutenant Governor who was appointed by, and was the representative of the Crown, of 24 members elected by adult universal suffrage constituting the House of Keys, and of seven members elected by the House of Keys who, with three ex-officio members, constituted the Legislative Council. The Court of Tynwald legislated for the Island in domestic matters, such legislation requiring ratification by Her Majesty in Council. It was the responsibility of the Home Secretary to advise the Privy Council in each instance whether or not to recommend to Her Majesty that an Island law should be ratified.

The United Kingdom Parliament had power to legislate for the Isle of Man but not use that power, in the ordinary course, without the concurrence of the Isle of Man Government, in respect of matters which were entirely domestic to the Isle of Man.

The Government next set out the relevant penal law and practice on the Isle of Man (see Annex) as well as the facts of the case as they have been stated above.

As regards the admissibility of the applications the Government maintained that no evidence had been put forward in support of the contention that corporal punishment was primarily pronounced on persons from financially and socially deprived homes and that Article 14 of the Convention was therefore violated. Moreover, there was no ground for supposing that sentences imposing corporal punishment have in any way been influenced by considerations of social origin, or by any of the other considerations declared by Article 14 of the Convention to constitute discrimination.

Finally, as regards Article 26 of the Convention which the respondent Government invoked in respect of the first applicant's application, it was submitted that this applicant had failed to exercise his right to appeal against his sentence to the Staff of Government Division of the High Court of Justice of the Isle of Man. The requirement of Article 26 was in mandatory terms, and the Commission had frequently held that the possibility, or even likelihood, of an appeal being unsuccessful, was not a valid reason for failing to exhaust the remedies (cf. Application No. 2257/64, Yearbook, Vol. 11, p. 180 and Application No. 3485/68, Yearbook, Vol. 12, p. 288).

2. The applicants, in their reply, first withdrew their applications in respect of the issue raised under Article 14 of the Convention.

Furthermore, since the admissibility of the second applicant's application was conceded by the respondent Government, the further observations referred only to the first applicant's case and to the question of exhaustion of domestic remedies in accordance with Article 26 of the Convention.

The Commission had always recognised that an exception to the general rule contained in Article 26 was made where the remedy available was not an effective remedy and in respect of "special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal" (cf. Application No. 3485/68, *loc. cit.*). The applicant maintained that in his case appeal to the Staff of Government Division would not have been an effective remedy or, in the alternative, the special facts of his case absolved him from the necessity of pursuing this particular remedy. Referring also to his previous submissions he pointed out, in particular, that

- the second applicant had pursued such an appeal and failed;
- there were no special circumstances why the first applicant should have received more favourable treatment on appeal;
- indeed, the trial court had considered the first applicant to be the ringleader so that no appeal court could have taken a lighter view of the acts of the first applicant than was taken of those of the second applicant;
- the first applicant was therefore faced with the impossibility of a successful appeal;
- furthermore, this application concerned a judicially and legislatively sanctioned administrative practice and as such fell outside the restrictions of Article 26 of the Convention.

The Commission was therefore urged to declare both applications admissible with respect to the issues raised under Article 3 of the

Convention.

THE LAW

1. Both applicants have withdrawn their applications in respect of the issue raised by them under Article 14 (Art. 14) of the Convention, namely that their punishment was discriminatory within the meaning of that provision in that it was primarily pronounced on persons from financially and socially deprived homes.

The Commission observes that there are no reasons of a general character affecting the observance of the Convention which would necessitate a further examination of these complaints. It therefore decides not to proceed with the examination of these parts of the applications which have been withdrawn by the applicant.

2. The Commission has next considered the remainder of the first applicant's application (No. 5775/72) in which he complained that the corporal punishment imposed on him and the circumstances connected therewith constituted breaches of Articles 1, 3, 6, 8 and 13 (Art. 1, 3, 6, 8, 13) of the Convention.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions 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 it is uncontested that this applicant failed to appeal against his sentence to the staff of Government Division of the High Court of Justice of the Isle of Man in accordance with Section 1 of the Summary Jurisdiction Act 1956 (Isle of Man). He has, therefore, not exhausted the remedies available to him under the domestic law. Moreover, an examination of the case as it has been submitted, including an examination made *ex officio*, 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 domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and the remainder of his application must be rejected under Article 27 (3) (Art. 27-3), of the Convention.

3. The Commission has then considered the remainder of the second applicant's application (No. 5856/72) concerning his punishment by birching to which he was sentenced by the C. Juvenile Court, Isle of Man. This sentence was confirmed on appeal by the Staff of Government Division at the Manx Court of Criminal Appeal, Isle of Man.

a) In this connection the applicant has first complained that the corporal punishment imposed on him constituted a breach of Article 3 (Art. 3) of the Convention.

The respondent Government have not contested the admissibility of this part of the application, but have reserved to the proceedings on the merits their position as to whether or not the punishment inflicted on the applicant constituted treatment contrary to Article 3 (Art. 3) of the Convention.

Article 3 (Art. 3) protects everyone against "torture or inhuman or degrading treatment or punishment" and the Commission considers that the question of corporal punishment raises as such an issue under that provision. The Commission has further considered *ex officio* that, insofar as the Summary Jurisdiction Act 1960 (Isle of Man) provides for such punishment only with regard to male children and male young

persons, issues arise as to whether or not this constitutes discrimination on grounds of sex and/or age, contrary to Article 14 (Art. 14) of the Convention, read in conjunction with Article 3 (Art. 3).

b) This applicant has further complained that the violation of Article 3 (Art. 3) also constituted a violation of Article 1 (Art. 1) of the Convention; that such punishment was destructive of family well-being and therefore contrary to Article 8 (Art. 8) of the Convention; and that no remedies existed to rectify the violations, which was inconsistent with Article 13 (Art. 13) of the Convention. However, the Commission finds that there is no such substance in these allegations.

Insofar as Article 1 (Art. 1) of the Convention is concerned, the applicant, having alleged breaches of Section I of the Convention, has not shown any reason for a separate consideration of Article 1 (Art. 1).

Insofar as Article 8 (Art. 8) of the Convention is concerned, it is true that this provision protects, subject to certain limitations, everyone's right to respect for his private and family life, his home and his correspondence. However, an examination by the Commission of this complaint as it has been submitted does not disclose any appearance of a violation of the above rights and freedoms in the present case.

Finally, insofar as Article 13 (Art. 13) of the Convention is concerned, this Article provides that 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". Therefore, insofar as this application is inadmissible, there is no basis for the application of Article 13 (Art. 13).

On the other hand, insofar as the application is admissible, and even assuming that a violation of Article 3 (Art. 3) of the Convention either alone or read in conjunction with Article 14 (Art. 14) can eventually be established by the applicant, the Commission notes that his case has in fact been heard by an appeal tribunal which dealt with the question of his sentence, Article 13 (Art. 13) has therefore been satisfied.

It follows that these parts of the application are manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention.

For these reasons the Commission

1. DECIDES NOT TO PROCEED FURTHER with an examination of both applicants' complaints under Article 14 (Art. 14) of the Convention as they have been formulated by them and withdrawn.
2. DECLARES INADMISSIBLE the remainder of Application No. 5775/72.
3. DECLARES ADMISSIBLE and retains, without in any way prejudging their merits, those parts of Application No. 5856/72 which raise issues under Article 3 (Art. 3) of the Convention, either alone or in conjunction with Article 14 (Art. 14).
4. DECLARES INADMISSIBLE the remainder of Application No. 5856/72.