

THE FACTS

The applicant is a Greek national, born in Athens in 1938 and at present resident in London. He states that he is a mercantile agent by profession.

He is married and has one daughter, named D., who was born in April 1965. His wife, who is British, lives with the daughter in Sunderland in the north of England.

According to the applicant, his daughter was brought into the United Kingdom from Greece by her mother in August 1969 on false pretences. Since then the daughter has been living in England against his will. In order to support his daughter financially and morally the applicant has been forced to go and live in the United Kingdom as well.

On .. October 1969 the child was made a ward of court, care and control being given to her mother. The question of the child's wardship came before the High Court again on .. January 1972. The Court heard the oral evidence of the applicant and his wife as well as of certain members of her family and had before it affidavits from all these persons. After hearing this evidence and having considered a report of the Court Welfare Officer of .. November 1971, the Court made the following order:

1. The child remains a ward of court;
2. She remains under the care and control of her mother;
3. Her father is allowed access to her for one weekend per month, on the Saturday and Sunday but not overnight;
4. Her father is to lodge her passport with the court;
5. He is restrained from moving her from England and Wales.

An appeal was lodged against this judgment by the applicant on .. January 1972. In his appeal he requested that he should be given care and control of his daughter, that he should have permission to take her for summer holidays to Greece, that he should be allowed access to her at any time including all public holidays and that the child should be able to spend summer holidays with him in England and Wales.

In support of his request for care and control the applicant informed the Court that he could not secure a job in England enabling him to support his daughter adequately. He stated that the child and her mother depended on his financial support, since the mother did not work and the only other income for the mother's whole family was her father's pension.

In support of his request that the child be allowed to spend summer holidays with him in Greece, he said this would keep her in touch with the Greek language and would bring her back into contact with her paternal family, for whom she had a natural affection.

Lastly, in support of his request that he should have access to his daughter on all public holidays and that she might spend summer holidays with him in England and Wales, he stated that with the existing access arrangements he had very little time left to see the child. (It seems that the applicant has to travel a total of six hundred miles each time he visits his daughter).

The Court of Appeal dismissed the appeal on .. March 1972 and confirmed the order of the High Court.

A further order concerning the child was made by the High Court on .. August 1972. Permission was given by the Court to the mother to take her daughter out of England from .. August to .. August for a holiday in Majorca.

The applicant claims that his daughter is not being properly looked after and puts this forward as a further reason why he should be granted her care and control. He alleges that his wife has breakdowns and that she and her own parents neglect the child. He also alleges that his daughter is not receiving the dental treatment she needs and that she is not washed properly.

In a letter to the Commission dated 4 September 1972 the applicant wrote that he was having difficulties in obtaining permission from the Home Office to stay in the United Kingdom. On .. August 1972 he was given permission to stay for one month only; at the time of writing the letter he had succeeded in obtaining an extension of three months. He was apparently concerned that he might lose the right to live in England and thereby be permanently deprived of access to his child. He stated that he felt the most urgent action was required.

On 28 November 1972 the applicant wrote to the Commission to say that he had sent his passport to the Home Office with a request for an extension. At the same time he submitted a copy of a notification from the Home Office dated .. November 1972 which acknowledged receipt of the passport and stated that pending a decision on his application for an extension he was authorised to remain in the United Kingdom.

Complaints

The applicant complains that his daughter, who is a Greek subject, has been deprived of her freedom and will be forced to spend at least twelve years of her life in the United Kingdom. She has not only been denied the right to Greek education, religion and philosophical convictions, but has also been refused the right to visit her own country.

He alleges that the British authorities have discriminated against him in favour of the British mother.

Alleging a violation of Articles 5 (1), 8 (1) and 14 of the Convention and Article 2 of Protocol No. 1, he states that the object of his complaint is to raise his daughter as a Greek national and give her the opportunity to live in Greece.

THE LAW

1. The applicant has complained that he has been deprived of the right to bring up his daughter in Greece as a Greek national and he contests the decision of the High Court giving care and control of the child to her mother. He alleges a violation of Article 8 (Art. 8) of the Convention.

It is true that Article 8 (1) (Art. 8-1) guarantees generally the right to respect for private and family life. However, paragraph (2) of Article 8 (Art. 8-2) allows interference by a public authority with the exercise of this right where "necessary ... for the protection of health or morals, or for the protection of the rights and freedoms of others". The Commission has previously held that "health or morals" includes the psychological as well as the physical well-being of individuals and, where a child is concerned, the mental stability and freedom from serious psychic disturbance of that child (cf. Application No 911/60, Yearbook, Vol. 4, p. 198).

The Commission recognises that, where parents are divorced and in other cases when the communal life of the parents is interrupted, it is legitimate, or even necessary, for the national law to provide rules covering the relationship between parents and children which differ from the rules which are applicable when the family unit is still maintained (see Application No. 2699/65, Yearbook, Vol. 11, pp. 366, 376).

It appears from the facts submitted by the applicant that, when the High Court gave its decision on .. January 1972 attributing care and control of the applicant's daughter to her mother, the child was only six years old and had been living exclusively with her mother for the previous two years. It appears further that the court heard the oral evidence of the applicant and his wife, as well as certain members of her family and had before it affidavits from all these persons. The Court also considered a report of the Court Welfare Officer of .. November 1971. The Commission finds that the applicant has in no way shown that, as a result of this decision, his family life has been interfered with in a manner which was not justified under paragraph (2) of Article 8 (Art. 8-2) particularly as regards the protection of the health and psychological well-being of his daughter.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

2. The applicant has further complained of the High Court's decision restricting his right of access to his daughter. This complaint has also been examined by the Commission in the light of Article 8 (Art. 8) of the Convention.

For similar reasons to those set out above, the Commission recognised that, once a parent has been deprived of the custody of his child, it may be necessary for the national courts to place restrictions on his right of access to the child, such restrictions frequently being imposed in the child's interest and therefore justified under paragraph (2) of Article 8 (Art. 8-2).

The Commission notes that in the present case the applicant has been allowed by the High Court to visit his daughter for one weekend each month. In these circumstances it considers that there is no indication that, by reason of the limitation imposed on his right of access to his child, his family life has been interfered with in a way which is not permitted under paragraph 2 of Article 8 (Art. 8-2) and again, particularly as regards all aspects of the child's health.

It follows that this part of the application is manifestly ill-founded.

3. The same ground of inadmissibility applies to the applicant's complaint that he has been prevented from having his daughter educated in the Greek language and in accordance with the Greek religion and philosophical convictions. He has in this respect alleged a violation of Article 2 of Protocol No. 1 (P1-2). It is true that this Article provides that "No person shall be denied the right to education;" and that "... the State shall respect the right of parents to ensure such education in conformity with their own religious and philosophical convictions". However, the right to determine the mode of a child's education is an integral part of the right of custody which in the present case has been removed from the applicant by the High Court. The applicant therefore no longer has the right to determine the manner in which his child's education is carried out (and see the decision of the Commission in Application No 2699/65, quoted above).

4. The applicant has also complained that the British authorities have discriminated against him in favour of his wife on account of his national origin. He alleges in this connection a violation of Article 14 (Art. 14) of the Convention, which provides that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground, including national origin.

The Commission has examined this complaint in the light of Article 14 (Art. 14) in conjunction with Article 8 (Art. 8) of the Convention. However, it finds that the applicant has not submitted any evidence to support his allegations.

An examination by the Commission of this complaint as it has been submitted, including an examination made *ex officio*, does not therefore disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in the above Article.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

5. The applicant has next complained that, his daughter having been made a ward of court, she will be obliged to spend at least 12 years of her life in the United Kingdom. He alleges that she has thereby been deprived of her liberty in violation of Article 5 (1) (Art. 5-1) of the Convention, which provides generally that everyone has the right to liberty and security of person.

The Commission recalls first that under Article 25 (Art. 25) of the Convention it may only receive applications from persons claiming to be a victim of a violation of the Convention. The Commission has, however, held in previous cases that by "victim" is meant not only the direct victim or victims of an alleged violation, but also any indirect victim who would suffer damage as a result of such violation or who would have a valid personal interest in securing the cessation of the violation (see e.g. the decision on the admissibility of Application No 1478/62, Yearbook, Vol. 6, pp. 590, 620).

The Commission considers that, if the applicant were to establish that his daughter had been deprived of her liberty and had thereby been a victim of a violation of Article 5 (1) (Art. 5-1) of the Convention, he could reasonably claim to be an indirect victim of the same violation. However, Article 5 (1) (Art. 5-1) has no possible relevance to the present complaint, since it is concerned with the right to liberty and security of person; whereas it is clear that the applicant's daughter has complete freedom of movement within the United Kingdom and also, with the consent of the High Court, outside the United Kingdom.

The applicant has not suggested that this complaint is to be regarded under any other provision of the Convention nor has the Commission itself found any article which could be relevant.

It follows that this part of the application is incompatible *ratione materiae* with the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

6. The applicant has finally complained that he has been having difficulties in obtaining permission from the Home Office to stay in the United Kingdom. It appears from his submissions that he is concerned that he might be expelled from the United Kingdom and thereby be permanently deprived of access to his child. The Commission decides to adjourn its examination of this part of the application for further consideration in the light of new information received from the applicant in his letter of 28 November 1972.

For these reasons, the Commission

1. DECLARES INADMISSIBLE the applicant's complaints under Articles 5 (1) and 14 (Art. 5-1, 14) of the Convention and Article 2 of Protocol No. 1 (P1-2), and also the complaint under Article 8 (Art. 8) of the Convention in connection with the High Court's decision to restrict his access to his child.

2. DECIDES TO ADJOURN its examination of the applicant's remaining complaint. (1)

(1) By a second partial decision, taken on 20 December 1972, the

Commission examined the remaining complaint and decided to ask the respondent Government for observations on admissibility with regard to this part of the application.
