

THE FACTS

The applicant is British national, born in 1948. She resides in London. She is assisted in the proceedings before the Commission by Mr. B., a solicitor practising in London.

Her application has been submitted in the following terms:

"1. Statement of the facts. On .. December 1969 I attended a rugby match at the Military Stadium at Aldershot, in the County of Hampshire between the Combined Services and the South African Springbok touring team. During the second half of the match, in the course of a peaceful demonstration against the South African Government's apartheid policy, I followed some other people on to the pitch. I was there arrested by a police constable and forcibly restrained. I was photographed under such restraint and against my will. I was then forcibly removed to a temporary police station and detained there for the purpose of being photographed, and I was again photographed under restraint and against my will. A constable whose identity is unknown to be asked me my name and I falsely informed him that it was Y. I also informed him correctly as to my age and date of birth. He entered these particulars upon a form to which he attached a photograph of me. He stated that the police were going to keep my photograph for future reference and that, if I caused trouble at any future Springbok matches, I would be charged. I was then released from custody. The said constables, in acting as aforesaid, were acting in purported performance of their police functions under the direction and control of one A., the Chief Officer of Police for Hampshire Police Area. At all material times since .. December 1969, the said A. has retained the negatives and copies of the said photographs or one of them, or has caused them to be retained, in records maintained by him or on his behalf. Despite repeated requests made on my behalf, he has refused, failed and neglected either to destroy the said negatives and copies or to deliver them up to me. Apparently, the object of this course of conduct is to deter me from participating in similar demonstrations again. For the reasons set out under paragraph 4 below, I have been advised that there is no effective remedy available to me under English law whereby I can compel the authority responsible for the Hampshire Police to comply with my said requests or to compensate me for the violation of my rights and freedoms by reason of the taking of the said photographs and the continued detention of the said negatives and copies.

"2. Violations of the Convention alleged.

- (i) Violation of my right under Article 5 to security of person;
- (ii) Violation of my right under Article 8 to respect of my private life;
- (iii) Violation of my right under Article 13 to have an effective remedy before a national authority in respect of the violation of Article 5 and/or Article 8 aforesaid.

3. Object of the claim.

- (a) to obtain the destruction or delivery up to me of all negatives and copies of the said photographs;
- (b) damages;

alternatively

- (c) to obtain an effective remedy before a national authority (including any necessary amendment of English law) in respect of the violations of the Convention set forth in paragraph 2 hereof arising from the matters set forth in paragraph 1 hereof.

4. Statement as to the exhaustion of domestic remedies.

Representations were made on my behalf to the Home Office by Mr. J., M.P. By letter dated .. March 1970, Mr. M., M.P., informed him of the attitude of his Department to the matters complained of herein. In July 1970 legal proceedings were commenced in the High Court by me and two other plaintiffs against the said A., sued as the Chief Officer of Police for the Hampshire Police Area. I and the first-named plaintiff were granted legal aid to enable us to bring those proceedings. By paragraph 7 of the Statement of Claim it was alleged that by reason of the matters set forth in paragraphs 3, 4 and 5 thereof, the defendant, his servants or agents assaulted and falsely imprisoned me and the other plaintiffs and deliberately infringed and continue to infringe our right of privacy. A claim was made for (1) a mandatory order either for the destruction or the delivery up of all negatives and copies of the said photographs, (2) damages, and (3) further or other relief. A defence was served on .. October 1970. In paragraph 7 thereof, the defendant denied (inter alia) that the allegation of infringement of a right of privacy disclosed any cause of action. On .. November 1970 notice was given that the defendant had paid the sum of £78 into court in satisfaction of the cause of action in respect of which I and the other plaintiffs had claimed. Mr. L. of counsel then advised the legal aid authorities on our behalf that the Courts would be unlikely to grant mandatory relief (as distinct from damages for assault and false imprisonment) unless we could establish that a right of privacy existed in English law and that such a right had been infringed in the circumstances of the present case. The authorities were not willing to extend legal aid to enable the proceedings to continue as a test to ascertain whether a right of privacy existed in English law so as to entitle us to the mandatory relief claimed in the action. I have been advised that it is extremely uncertain whether the courts would recognise the existence of such a right; and, that, in the absence of such a right, there is no remedy which would enable me to obtain the destruction or delivery up of the negatives and copies of the photographs. For example, the Regulations for the Measuring and Photographing of Criminal Prisoners (S.R. & O, 1896, no. 762) made "under the Penal Servitude Act, 1891, and still in force by virtue of Section 54 (3) of the Prison Act 1952, do not apply to the circumstances of my case. Under those Regulations, an untried criminal prisoner must not be photographed or measured while in prison except by an order of the Secretary of State, or upon an application in writing signed by a Senior Police Officer and approved by a magistrate. All such applications must set forth that from the character of the offence with which the prisoner is charged or for other reasons, there are grounds for suspecting that he has previously been convicted, or has engaged in crime, or that for any other reasons, there are grounds for suspecting that he has previously been convicted, or has engaged in crime, or that for any other reason his photograph and measurements are required for the purpose of justice. And, when an untried prisoner who has not previously been convicted of crime is photographed and measured under these Regulations, if he is acquitted, all photographs (both negatives and copies) must forthwith be destroyed or handed over to him. By S.R. & O. 1913 No. 987, these Regulations have also been applied to persons imprisoned for default of entering into a recognisance or finding sureties for keeping the peace or being of good behaviour. I am thus in a worse position than an untried criminal prisoner or persons imprisoned for such default because, (1) there were no procedural requirements with which the police had to comply before photographing me whilst I was restrained in their custody, and (2) although I have not been prosecuted for any crime, I am not entitled under English law to have the photographs destroyed or handed over to me. After the refusal to extend legal aid, protracted negotiations took place between my solicitors and the defendant's solicitors as to the basis upon which the proceedings might be discontinued. Upon the advice of my counsel, at the hearing of the summons for directions, on .. April 1972 leave was obtained from Master C. to amend paragraph 7 of the Statement of Claim by striking out the alleged infringement of a right of privacy and to amend the prayer by striking out the claim for mandatory relief. On .. June 1972 my solicitors gave formal notice of

discontinuance of the amended claim and, on .. July 1972 Master D. ordered that the sum of £78 paid into Court on .. November 1970 be paid out to the plaintiffs 'in satisfaction of all surviving causes of action herein the defendant having no liability for the plaintiffs' costs and that the plaintiffs' costs be taxed in accordance with the Third Schedule to the Legal Aid and Advice Act 1949'. The present position, therefore, is that my claim for damages for assault and false imprisonment has been discontinued and payment has been ordered for the monies in Court in respect of that cause of action; the claim for the destruction or delivery up of the photographs was abandoned before the notice of discontinuance and acceptance of the payment into Court, there being no sufficient prospect of obtaining such relief to justify the extension of legal aid or the continuance of a claim for such relief in the English courts; the defendant continues to retain the photographs and to refuse either to destroy them or to deliver them up to me; and there is no remedy in English law in respect of the taking of the photographs and their continued retention in the circumstances described in paragraph 1 hereof. Accordingly, I have exhausted all my domestic remedies."

THE LAW

1. The applicant has complained that photographs of her were taken by the police against her will and that the police have refused to destroy them or hand them over to her. She complains that this is an infringement of her right under Article 5 (Art. 5) of the Convention to security of person and of her right under Article 8 (Art. 8) to respect for her private life. She has also alleged the violation of Article 13 (Art. 13) of the Convention.

2. The Commission has first examined whether the applicant's complaint could give rise to an issue under Article 5 (Art. 5) of the Convention. Article 5 (1) (Art. 5-1) provides: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law..."; six sub-paragraphs then follow.

The Commission is of the opinion that the expression "liberty and security of person" in paragraph (1) of Article 5 (Art. 5-1) must be read as a whole and that consequently "security" should be understood in the context of "liberty". Put in different terms, "security of person" means physical security, that is freedom from arrest and detention. The retention of the photographs cannot then affect the applicant's physical security, particularly as there is no suggestion that they would be used for her identification unless the applicant herself chooses to take part in an unlawful public demonstration on a future occasion.

It follows that no issue could arise in the present case under Article 5 (Art. 5) of the Convention.

The Commission has then examined the applicant's complaint in the light of Article 8 (Art. 8) of the Convention, which secures to everyone, in paragraph 1 (Art. 8-1), the right to respect for his private and family life, his home and his correspondence.

The Commission has noted here the following elements in the case as it has been presented: first, that there was no invasion of the applicant's privacy in the sense that the authorities entered her home and took photographs of her there; secondly, that the photographs related to a public incident in which she was voluntarily taking part; and thirdly, that they were taken solely for the purpose of her future identification on similar public occasions and there is no suggestion that they have been made available to the general public or used for any other purpose. Bearing these factors in mind, the Commission finds that the taking and retention of the photographs of the applicant could not be considered to amount to an interference with her private life

within the meaning of Article 8 (Art. 8).

An examination by the Commission of the applicant's complaint as has been submitted shows that the taking of her photographs was part of and solely related to her voluntary public activities and does not therefore disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in the two articles just considered.

It follows that, viewed under these two articles, the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

3. The applicant has also complained of a violation of Article 13 of the Convention, in that there was no effective remedy before a national authority for the alleged violations of Article 5 and Article 8 (Art. 5, 8) referred to above. The Commission observes that Article 13 (Art. 13) related exclusively to a remedy in respect of a violation of one of the rights and freedoms set forth in the other articles of the Convention. In the present case, however, not even the appearance of a violation of any of these articles has been established and there is therefore no basis for the application of Article 13 (Art. 13).

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

For these reasons, the Commission **DECLARES THIS APPLICATION INADMISSIBLE.**