

THE FACTS

Whereas the facts as presented by the applicant's solicitors and as appearing from the documents submitted by them may be summarised as follows:

I. He was elected to Parliament in 1918 as a member of the Conservative Party; dissatisfied with the Government policy the applicant became first an independent member of Parliament, was again returned in the 1922 and 1923 elections, and finally joined the Labour Party in 1924. In 1929 the applicant became a junior Minister in charge of unemployment, in the second McDonald Government. In this capacity he put forward a scheme for dealing with unemployment which was turned down by the Cabinet and, in 1930, he resigned from the Government. Having resigned from the Labour Party as well, the applicant decided to form a new Party which was later called the "British Union of Fascists". According to the applicant's statements, the British version of the Fascist movement was fundamentally different from Italian fascism, or German National Socialism. The Union's policy was to create a system of economic autarchy within the British Empire, to control private enterprises and to modify British constitutional law at a first stage by way of elections based on a vocational basis and, afterwards, by the abolition of Parliament itself and the concentration of all powers in the hands of the Government.

At the outbreak of the Second World War, the applicant advocated a compromise peace with Germany and Italy. After the fall of France he was interned by the British Government until November 9 1943 when he was restricted in his activities until the end of the war. After the war the applicant reconstituted his Party under the name of "Union Movement" aiming at European union and European Government.

The applicant further states that during his whole political career he was never anti-Semite, nor did he preach racial hatred or racial and religious discrimination.

II. The applicant states that the British Broadcasting Corporation (BBC) has been conducting a campaign against him since 1958, stating that in the 1930s he wanted to emulate Italian and German dictatorship and that he was advocating racial hatred, anti-Semitism and violence.

The applicant's particular complaint now before the Commission concerns a television programme broadcast on .. April, 1966, in which it was said that the applicant was an imitator of Hitler.

The applicant states that, on .. July, 1966, his solicitors wrote to the BBC and requested that he should be allowed to make a statement through the same media through which the allegedly defamatory statements about him had been made, but that this request was refused by a letter from the BBC's solicitors dated .. September, 1966.

The applicant who had commenced a libel action against the BBC in a previous case, which, however, he did not pursue did not bring a new libel action stating his reasons as follows:

(a) according to Section 6 of the Administration of Justice Act 1933, libel actions have to be tried before a jury and no proper redress is obtainable as the court can only award damages but has no power to order the publication of a reasoned judgment with a view to restoring the reputation of the plaintiff;

(b) when fair comment is pleaded as had been done by the BBC in the previous case, the procedure is extremely long, expensive and complicated. The cost of such proceedings would be prohibitive for him whereas the BBC on the other hand has several thousand pounds of licence fees at its disposal;

(c) the matter would be decided by a jury which itself would be influenced by the television and press campaign.

SUBMISSIONS OF THE PARTIES

A. The applicant has inter alia submitted that, as a result of the official character of the BBC, the acts complained of are to be deemed the acts of the British Government. He has alleged violations of the following rights guaranteed by the European Convention:

1. The libellous attacks on his reputation endanger his personal safety, and disrupt his family life, in violation of the right to respect for private and family life as guaranteed in Article 8 of the Convention; He has submitted that the continuous attacks affected the health and spirits of his wife, Lady X. preventing her from accompanying him without risk to her health and safety on his visits to England from France;

2. the impossibility for the applicant to obtain proper redress in the English courts for the alleged violations of his rights guaranteed by Article 8 of the Convention constitutes itself a violation of the right under Article 6, paragraph (1), of the Convention, of a failure to have his civil rights determined within a reasonable time by an impartial tribunal. The applicant has also contended that a trial before a jury would not be an impartial one, as the other party has at its disposal mass media fit to influence the jurors at its sole command;

3. he has further alleged a "violation of Article 13 of the Convention, in that the British Government failed to provide an effective remedy before a national authority to the applicant and to amend the state of English law regarding libel so that it might comply with the provisions of the Convention".

The applicant has claimed:

(a) the cessation of the BBC's libellous allegations against him, and

(b) the possibility to refute the libel by means of the same mass media through which they were made by the BBC.

B. The respondent Government has maintained that it was in no way responsible for the programme broadcast by the BBC since the BBC is not a department of the British Government. The Government has inter alia made the following submissions:

"[The BBC] is an independent corporation whose acts are, in fact and as a matter of consistent government policy, and in law in accordance with its Charter, its own acts and not those of the British Government. The duty imposed on the BBC by Clause 14 (3) of the Licence and Agreement is a duty to make specific announcements at the request of a Minister. It does not affect the independent status of the BBC nor does it imply that the content of regular programmes is in any way at the behest of the Government. The power retained by the Postmaster General in Clause 14 (4) of the Licence and Agreement is a reserve power of veto and not a power to dictate the content of programmes. Corresponding powers of the Postmaster General are contained in Section 17 of the Television Act 1964 in respect of the Independent Television Authority which also operates under a Licence granted by the Postmaster General."

The respondent Government has further submitted that the applicant has failed to exhaust all domestic remedies in accordance with Article 26 of the Convention and that he has failed to show any reason which, under the generally recognised rules of international law would dispense him from this requirement.

PROCEEDINGS BEFORE THE COMMISSION

By partial decision of 8th February, 1968, the Commission declared inadmissible certain complaints made by the applicant with regard to a number of radio and television programmes broadcast by the BBC prior to 14th January, 1966, date at which the United Kingdom Government recognised the right of individual petition with regard to subsequent events.

At the same time the Commission decided, in accordance with Rule 45, paragraph (3) (b), of its Rules of Procedure, to give notice thereof to the United Kingdom Government and to invite it to submit its observations on the question of admissibility.

On 26th April, 1968, the respondent Government submitted its written observations on admissibility and on 23rd July, 1968, the applicant's solicitors submitted his observations in reply. At the same time they requested an adjournment of the case for three months in view of "certain negotiations".

On 24th September, 1968, the applicant's solicitors informed the Commission's Secretary that their client had reconciled his differences with the BBC and that it would not be necessary to proceed with the application further.

After having been requested to give information as to the terms of the settlement reached, they wrote on 1st October, 1968, as follows:

"BBC has made recorded interviews with our client and has actually shown them on television in England.

A further and longer interview with our client was also discussed to be concerned with his career which is the subject of his forthcoming book, and these facts would have appeared to have removed our client's cause of complaint."

THE LAW

Whereas the applicant states that he wishes not to proceed with this application further; whereas the Commission has considered this declaration in the light of its constant jurisprudence in cases of proposed withdrawal of an application pending before it; whereas it results from this jurisprudence that in such cases the Commission is called upon to ascertain whether there are any reasons of a general character affecting the observance of the Convention which would necessitate a further examination of the applicant's complaint; whereas in this respect reference is made to Application No. 2294/64, *Gericke v. Federal Republic of Germany* (Yearbook vol. VIII, p. 315), Application No. 2076/63, *Wiener Städtische Wechselseitige Versicherungsanstalt against Austria* (Collection of Decisions, Vol. 23, p. 74);

Whereas in considering the declaration of withdrawal made by the present applicant, the Commission has taken into account the written observations of the Parties on the admissibility; whereas it is true that the application raises certain important questions concerning the interpretation of the Convention on which the Parties have maintained different views; whereas the United Kingdom Government has particularly submitted that, in view of the independent status of the BBC as guaranteed by its Charter, the Government could have had no responsibility for anything said or shown in the programme concerned; whereas however the Commission finds that it is not called upon to determine this issue as in the particular circumstances of this case, there are no compelling reasons of a general character affecting the observance of the Convention which would necessitate a further examination of the applicant's complaints.

Now therefore the Commission DECIDES TO STRIKE THIS APPLICATION OFF THE LIST