

Application No. 9114/80
Kamharaj DURAIRAJ, Margaret BAKER (formerly DURAIRAJ)
and Anthony DURAIRAJ

against

the United Kingdom

REPORT OF THE COMMISSION

adopted on 16 July 1987

TABLE OF CONTENTS

	Page
INTRODUCTION	1
Part I: STATEMENT OF THE FACTS	3
Part II: SOLUTION REACHED	4

INTRODUCTION

1. This Report relates to Application No. 9114/80 introduced by Kamharaj Durairaj, Margaret Baker (formerly Durairaj) and Anthony Durairaj against the United Kingdom on 2 July 1980 under Article 25 of the Convention for the protection of Human Rights and Fundamental Freedoms. The application was registered on 11 September 1980.

The applicants were represented first by Messrs. David Carr and Roe, solicitors, Birkenhead, succeeded by Messrs. Christopher Thomas & Co., solicitors, Birkenhead.

The Government were represented by their Agents, first Mrs. A. Glover, succeeded by Mr. M.R. Eaton, and Mr. M. Wood and Mr. J.A. Grainger, all of the Foreign and Commonwealth Office.

2. On 11 October 1984, the European Commission of Human Rights declared admissible the third applicant's complaints concerning his right to education and the first and second applicants' complaints concerning their parental rights to have the third applicant educated in conformity with their own philosophical convictions. The Commission then proceeded to carry out its task under Article 28 of the Convention which provides as follows:

"In the event of the Commission accepting a petition referred to it:

- a. it shall, with a view to ascertaining the facts undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities,

after an exchange of views with the Commission;

- b. it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

3. The Commission found that the parties had reached a friendly settlement of the case and on 16 July 1987 it adopted this Report which, in accordance with Article 30 of the Convention, is confined to a brief statement of the facts and of a solution reached.

The following members of the Commission were present when the Report was adopted:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTI
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs G.H. THUNE
Sir Basil HALL
M. F. MARTINEZ

I. STATEMENT OF THE FACTS

4. The applicants are United Kingdom citizens, residing at Birkenhead, Merseyside in England. The first and second applicants are the parents of the third applicant who was born on 27 June 1964.

5. The application concerns the refusal by the first and second applicants to allow corporal punishment of their son at school and their son's subsequent suspension from school in 1979. In April 1980 proceedings were brought against the first and second applicants under Section 39 of the Education Act 1944 for failing to send the third applicant to school. On 9 June 1980 the first and second applicants were convicted by the Magistrates Court under Section 39 of the Education Act 1944. The first applicant was fined £50 and ordered to pay £25 costs and £150 legal aid contribution. The second applicant was fined £50 and ordered to pay £25 costs.

6. The third applicant did not return to school and did not take any school leaving examinations.

7. Before the Commission, the applicants complained in particular that the third applicant's suspension from school was contrary to his right to education ensured by Article 2, first sentence, of Protocol No. 1 to the Convention. The first and second applicants complained, under Article 2 second sentence that the proposed punishment of their son and the use of corporal punishment in the school were contrary to their right to have their son educated in conformity with their own philosophical convictions.

8. The application was introduced on 2 July 1980 by the applicants and registered on 11 September 1980. On 11 December 1980 the Commission decided to bring the application to the attention of the respondent Government without asking them to submit written observations pending the decision of the European Court of Human

Rights in the Campbell and Cosans case. Following the Court's judgment in the case of Campbell and Cosans (Eur. Court H.R., Campbell and Cosans judgment of 25 February 1982, Series A No. 48) the applicants on 30 June 1982 made further submissions in the light of that judgment.

9. The Commission decided on 14 October 1982 that the Government should be invited to submit their observations on the admissibility and merits of the application. The Government's observations were submitted on 23 March 1983. The applicants submitted further observations in reply on 12 July 1983 together with further communications on 8 November 1983, 19 December 1983 and 3 May 1984. The Commission decided on 16 December 1983 that the applicants be granted free legal aid.

10. The Commission declared the application admissible on 11 October 1984.

II. SOLUTION REACHED

11. Following its decision on the admissibility of the application, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement in accordance with Article 28 (b) of the Convention and invited the parties to submit any proposals they wished to make.

12. In accordance with its usual practice the Commission instructed its Secretary to contact the parties for this purpose. Following a meeting and an exchange of correspondence channelled through the good offices of the Commission, the Agent of the Government, by letter of 9 July 1987, made the following declaration:

"I have the honour to refer to the discussions which have taken place concerning a friendly settlement of the above application.

The Government of the United Kingdom would recall the provisions of the Education (No. 2) Act 1986, which received the Royal Assent on 7 November 1986. The relevant provisions of the Act are Section 47 (abolition of corporal punishment) and Section 48 (abolition of corporal punishment: Scotland). These provisions come into force on 15 August 1987. Similar arrangements will apply in Northern Ireland: the Education (Corporal Punishment) (Northern Ireland) Order 1987 (S.I. 1987/461).

The Government are prepared to make the following ex gratia payments with a view to achieving a friendly settlement of the above application:

- £4000 to the third applicant,
- £750 (in total) to the third applicant's parents (the first and second applicants).

In addition, the Government are prepared to pay the applicants' reasonable costs in the domestic and Strasbourg proceedings."

13. The contents of this declaration was transmitted to the applicants' representatives, who by telex of 15 July 1987 confirmed that the applicants accepted this offer and considered the matter to be settled.

14. On 16 July 1987 the Commission noted that the parties had reached agreement regarding the terms of settlement. The Commission also noted the provisions of the Education (No. 2) Act 1986, which

received the Royal Assent on 7 November 1986 concerning corporal punishment in schools. The Commission found, having regard to Article 28 (b) of the Convention, that a friendly settlement of the present application had been secured on the basis of respect for Human Rights as defined in the Convention.

For these reasons, the Commission adopted this Report.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)