

EUROPEAN COMMISSION OF HUMAN RIGHTS

PLENARY COMMISSION

Application No. 20605/92

Alison Halford

against

the United Kingdom

REPORT OF THE COMMISSION

(adopted on 18 April 1996)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The application

2. The applicant is a British citizen, born in 1940 and resident in Wirral. She was represented before the Commission by Mr. Robin Makin, a solicitor practising in Liverpool.

3. The application is directed against the United Kingdom. The respondent Government were represented by Ms. Susan Dickson, Agent, Foreign and Commonwealth Office.

4. The case concerns allegations of interceptions of telephone calls made by the applicant from her office and home telephones. The applicant invokes Articles 8, 10, 13 and 14 of the Convention.

B. The proceedings

5. The application was introduced on 22 April 1992 and registered on 10 September 1992.

6. On 11 January 1994 the Commission (First Chamber) decided, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite the parties to submit written observations on the admissibility and merits of the applicant's complaints under Articles 8, 10 and 13 of the Convention.

7. The Government's observations were submitted on 17 June 1994 after two extensions of the time-limit fixed for this purpose. The applicant replied on 9 September 1994 after one extension of the time-limit.

8. On 2 March 1995 the Commission (Plenary) declared admissible the applicant's complaints under Articles 8, 10, 13 and 14 of the

Convention. It declared inadmissible the remainder of the application.

8. The text of the Commission's decision on admissibility was sent to the parties on 9 March 1995 and they were invited to submit such further information or observations on the merits as they wished. No such observations have been received.

9. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

10. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
E. BUSUTTIL
C.A. NØRGAARD
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN

11. The text of this Report was adopted on 18 April 1996 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

12. The purpose of the Report, pursuant to Article 31 of the Convention, is:

- (i) to establish the facts, and
- (ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

13. The Commission's decision on the admissibility of the application is annexed hereto.

14. The full text of the parties' submissions, together with the

documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular circumstances of the case

15. The applicant was appointed to the rank of Assistant Chief Constable with the Merseyside Police in May 1983. As such she became the most senior ranking female police officer in the United Kingdom. This post involved, at times, 24 hour responsibility.

16. Subsequently, the applicant applied on a number of occasions to be appointed to a more senior post but these applications were refused. In or about February 1990 she was informed that she had not been selected for appointment to Deputy Chief Constable. The applicant considered that the candidate appointed, a male colleague, had less experience and was less qualified. On 4 June 1990 she commenced proceedings in the Industrial Tribunal against, inter alia, the Chief Constable of Merseyside Police and the Home Secretary on the basis that she had been discriminated against on the grounds of her sex.

17. At or about the same time, the Police Authority commenced disciplinary proceedings against the applicant alleging misconduct. On 20 September 1990 the Senior Officers Disciplinary Committee referred matters to the Police Complaints Authority. On 8 February 1991 that Committee resolved to press charges.

18. The applicant was suspended from duty on full pay from 12 December 1990. The applicant challenged the decision to institute disciplinary proceedings in the High Court. The matter was adjourned by the High Court judge in September 1991 in view of a possible settlement. The parties failed to reach agreement and the matter came back before the High Court on 20 December 1991. The High Court judge found that the Chairman and Vice-Chairman of the Police Authority had acted ultra vires in the procedure adopted in relation to the applicant and, without imputing ill-motive to them, held that there was an element of unfairness. He quashed the relevant decisions.

19. In the proceedings before the Industrial Tribunal, there were 45 days of evidence and submissions. On 14 July 1992 the proceedings were adjourned pending negotiation between the parties. By decision dated 4 August 1992 the Industrial Tribunal dismissed the application since the applicant had withdrawn her complaints. The withdrawal was made on the basis of ex gratia payments to the applicant and on the basis of an agreement by the Home Office with the Equal Opportunities Commission to update and review certain appointments procedures and to institute an award system for a written report by serving police officers on an equal opportunities project in the police service.

20. The applicant alleges that as a result of her complaints of sex discrimination she was subjected to, inter alia, interception of her calls made from her home and her office telephones. She had two telephones in her office (one telephone for personal calls and one telephone for police work and the calls from both these telephones were paid for by the police). The applicant also had a telephone at home.

21. The applicant refers to numerous incidents upon which she relies as direct and indirect evidence of such interceptions:

- (a) In July 1990 while the applicant was out of the office, persons purporting to be from an outside carpet agency arrived to stretch her office carpet. The applicant had made no request for such service and could find no sign of any movement of furniture or carpet as a result. Having traced the carpet agency, under the guise of losing a pen, to an almost derelict back

street close to her employer's premises, she saw no sign of life during a period of observation.

(b) Subsequently, the applicant's personal telephone line began to emit short rings, which according to a source, indicated that a monitoring system was in use.

(c) In October 1990 the applicant was visited in her office by a well placed reliable source who was clearly unwilling to speak openly in the applicant's office. The applicant took that person to another room where the applicant was informed that instructions had been given to another officer not to speak to the applicant about certain matters.

(d) In December 1990 a source informed the applicant that full surveillance had been mounted on her by Special Branch with a view to finding out information to discredit her in the discrimination proceedings.

(e) Another source revealed that in December 1990 he had been approached with a view to his making a statement detrimental to the applicant and that, in the course of this, the Assistant Chief Constable A. revealed that he had knowledge of a personal conversation the source had with the applicant in her office.

(f) Also in December 1990 the applicant had conversations with a Mr. G. on her home and office telephone during which he warned her about the involvement of the Police Complaints Authority and her imminent suspension. He was subsequently questioned by the Chairman of the Police Authority about the contact which he had had with the applicant and faced proceedings (later discontinued) for unauthorised disclosure of information. Mr. G. informed a Home Office official that he believed that the police had embarked on a telephone tapping exercise.

(g) Other sources revealed to her that efforts were being made to obtain evidence to use against her. The Equal Opportunities Commission has confirmed that a member of Special Branch had taken a statement from a witness who was being prevailed upon to give evidence against the applicant.

(h) The applicant was informed in March-April 1991 that the Merseyside police, using specialised equipment called palentype, took transcripts of the applicant's intercepted private home telephone communications. This was disclosed to the applicant by a source who walked into an office where the transcript was being checked.

(i) Assistant Chief Constable A. was reported to the applicant as having, at a Christmas social function 1991/1992 in the presence of other officers, boasted that the applicant's telephone was being tapped. On 3 April 1992 the applicant had a telephone conversation with the Chief Constable from which she alleges that it was tacit that her communications had been and were continuing to be intercepted.

22. The applicant wished to raise the matter of the alleged interception of her telephone calls in the proceedings before the Industrial Tribunal but considered that she was not allowed to do so in light of section 9 of the Interception of Communications Act 1985 which expressly excluded the calling of evidence relating to such matters.

23. On 6 December 1991 the applicant complained to the Interception of Communications Tribunal. By letter dated 21 February 1992 the Tribunal informed the applicant that their investigation had satisfied them that there had been no contravention of sections 2 to 5 of the

Interception of Communications Act 1985 in relation to a relevant warrant or relevant certificate. By letter dated 27 March 1992 the Tribunal refused to clarify whether interceptions took place or whether this had been authorised by the Home Secretary.

24. In a letter dated 4 August 1992 the Home Office explained to the applicant's Member of Parliament that insofar as the applicant had complained of the interception of her office calls, the eavesdropping by the Merseyside police on their own telephone system fell outside the scope of the Act and would not require a warrant.

25. The applicant's home telephone consists of the telephone apparatus in her home which is connected to the Network Termination Point ("NTP"). From the NTP the applicant's home telephone is connected to a public telecommunications network. The applicant's office telephones were part of the Merseyside Police internal telephone system, a private telecommunications system.

B. Relevant domestic law and practice

I. Public telecommunications systems.

26. On 10 April 1986 the Interception of Communications Act 1985 ("the 1985 Act") came into force in the United Kingdom pursuant to the judgment of the Court in the Malone case (Eur. Court H.R., Malone judgment of 2 August 1984, Series A no. 82). Its objective, as outlined in the Home Office White Paper dated February 1985, is to provide a clear statutory framework within which the interception of communications on public systems will be authorised and controlled in a manner commanding public confidence.

(a) Warrants.

27. Section 1 of the 1985 Act makes it a criminal offence for anyone to intentionally intercept a communication in the course of its transmission by means of a public telecommunications system except in four statutorily defined situations including when that interception is in obedience of a warrant issued in accordance with sections 2-6 of the 1985 Act. The prosecution of this offence is a matter for the police. However, if the Commissioner (see below) comes across a case of unauthorised interception it is accepted practice that he reports the matter to the Prime Minister.

28. Section 2 (1) confers on the Secretary of State the power to issue warrants requiring the interception of communications and the disclosure of intercepted material in such a manner and to such persons as are described in the warrant. Section 2 (2) of the 1985 Act provides that the Secretary of State shall not issue a warrant under this section unless he considers that a warrant is necessary (i) in the interests of national security; (ii) for the purpose of preventing or detecting serious crime; or (iii) for the purpose of safeguarding the economic well-being of the United Kingdom.

29. Section 3 of the 1985 Act contains a detailed series of provisions restricting the scope of any warrant issued. Section 4 deals with the manner in which a warrant may be issued and with the duration of the warrant. Section 5 deals, inter alia, with the modification of any such warrant. Under Section 6 the dissemination and retention of information obtained by interception under warrant are limited and controlled.

(b) The Interception of Communications Tribunal.

30. Any person can complain to the Interception of Communications Tribunal ("the Tribunal") in respect of a suspected interception. The Tribunal consists of five members each of whom must be a lawyer of not less than 10 years standing and can hold office for five years subject

to re-appointment. Section 7 of and Schedule 1 to the 1985 Act contain detailed provisions for the investigation of complaints by the Tribunal. If the application does not appear to the Tribunal to be frivolous the Tribunal will investigate whether there is or has been a relevant warrant and, if so, will apply principles of judicial review in determining whether there has been a breach of sections 2-5 of the 1985 Act.

31. If there has been no such breach the Tribunal will merely confirm this but will not confirm whether a warrant has been issued or not. If there has been a breach the Tribunal may notify the applicant of its conclusion on this point, must report on its findings to the Prime Minister and to the Commissioner and, if the Tribunal thinks fit, it can order the quashing of the warrant, destruction of the intercepted material and payment by the Secretary of State of compensation. The Tribunal does not give reasons for its decisions and there is no appeal from a decision of the Tribunal.

(c) Exclusion of evidence.

32. Section 9 of the 1985 Act provides that no evidence shall be adduced by any party, in any proceedings before a court or tribunal, which tends to suggest that an unlawful interception has been committed by, inter alia, a person holding office under the Crown. There are some clearly defined exceptions to this rule, none of which is relevant to the present application.

(d) The Commissioner.

33. The Commissioner is appointed by the Prime Minister and must have held or hold a high judicial office. The Commissioner's role is mainly a supervisory one. His functions include the following:

(i) to keep under review the carrying out by the Secretary of State of the functions conferred on him by sections 2-5 of the 1985 Act;

(ii) to keep under review the adequacy of the arrangements under section 6 of the 1985 Act;

(iii) to assist the Tribunal;

(iv) to report to the Prime Minister if the Commissioner is of the opinion that there has been a breach of sections 2-5 of the 1985 Act which has not been so reported by the Tribunal or if the arrangements under section 6 of the 1985 Act are inadequate;

(v) to make an annual report to the Prime Minister on the exercise of his functions which report must be laid before Parliament. The Prime Minister has the power to exclude any matter from the report if publication would be prejudicial to national security, to the prevention or detection of serious crime or to the well-being of the United Kingdom. The report must state if any matter has been excluded.

(e) The Commissioner's Reports (1986-1993).

34. In general the reports of the Commissioner to the Prime Minister have indicated an increase in new warrants issued, but the Commissioner has been satisfied that in all cases those new warrants were justified under section 2 of the 1985 Act.

1986 Report

35. Since this was the first report of the Commissioner (then Lord Justice Lloyd, a member of the Court of Appeal) it was largely concerned with explaining how the 1985 Act operated in practice. In

this regard the Commissioner pointed out the following:

"<the Commissioner> cannot in the nature of things know, nor could he well find out, whether there has been an unlawful interception in breach of section 1. That is a job for the police. By unlawful interception I mean interception without a warrant and without any of the other defences provided by section 1." (para. 3)

1990 Report

36. The Commissioner noted as follows:

"My task is to ensure that those who issue warrants do not overstep the mark ... Where possible I see all new warrants issued since my previous visit. Where the number of new warrants is too great for this, I select cases at random. ... I am shown everything I ask to see. Although I cannot claim to have seen every warrant, I am satisfied that this system works. ... I have no reason to suppose that any warrants have, as it were, slipped through the net. I am confident that this has not been the case." (para. 8)

37. The Commissioner also referred to the common assumption that members of the public seem to make that their telephones are being intercepted because they hear a "mysterious clicking noise". He confirmed that the device used for interception of calls is inaudible to the subscriber either on connection or in operation. He went on to describe the device used (by those responsible for running a public telecommunications system) for metering. A warrant under the 1985 Act is not required for a metering device as it is used to record the duration and destination of calls in order to verify a subscriber account and does not involve listening to the telephone conversation.

38. In relation to the standard form notice issued by the Tribunal to a complainant confirming that there has been no breach of sections 2-5 of the 1985 Act (used whether a warrant has been issued or not), the Commissioner noted the following:

"If he complains to the police he is told that they cannot take action unless the interception was unauthorised. Since the subscriber does not know and cannot find out from the tribunal whether there has been any interception he is said to be without any effective remedy. There is some force in this argument. ... If any subscriber could find out whether his telephone was being intercepted or not, then the secrecy which is essential to the successful operation of the system would be gone." (para. 19)

1991 Report

39. Since the Commissioner was coming to the end of his second term his report included a review of the previous six years' operation of the 1985 Act (1985-1991 inclusive). He commented as follows:

"As part of my duties I make regular visits to HM Customs, the police and the security and intelligence agencies in England, Scotland and Northern Ireland. From the start I have been impressed by the determination of the agencies not only to obey the letter of the law but also the spirit... I am satisfied that the system is working as intended by Parliament, and is working well." (para. 7)

40. In response to allegations made in the Guardian newspaper implying that there were many unauthorised interceptions, the Commissioner stated that there was no basis whatsoever for this speculation.

41. In response to similar allegations made in a television documentary programme, he noted as follows:

"There is not the slightest truth in the suggestion, repeated in the Guardian on the 16 July, that the law is being 'bent' by GCHQ, and that British businessmen are being 'ambushed' as a matter of routine." (para. 13)

1992 Report

42. In this report the current Commissioner (Sir Thomas Bingham, Master of the Rolls) outlined four safeguards against "abuse" contained in the 1985 Act (cf paras. 5-8 of the 1992 Report). He described the first safeguard as follows:

"It is the professional vigilance, competence and integrity of those who initiate and prepare warrant applications for consideration by Secretaries of State. In the first instance applications for warrants are initiated by police forces ..., HM Customs and Excise and the intelligence agencies. Such applications are channelled, as appropriate, through the Home Office, the Foreign and Commonwealth office, the Scottish office or the Northern Ireland office. Since 1 April 1992 applications for warrants relating to serious crime from police forces in England and Wales have been submitted through the National Criminal Intelligence Service. Previously the Metropolitan police had fulfilled this role. Before any application reaches the Secretary of State it is considered at various levels both within the initiating body and within the presenting department. ... Such a process would of course afford little protection if the officials responsible for handling these cases, in the initiating bodies or the presenting departments, were unmindful of the statutory criteria or careless whether they were satisfied or not. In the course of my investigations ... I have paid attention to this important aspect. I have been greatly impressed by the detailed understanding and scrupulous observance of the statutory criteria by the officials who handle these applications."

43. The Commissioner noted that the second major safeguard against abuse is the requirement of the Secretary of State to personally sign or authorise every warrant. In this way "there may be no official interception save on the personal authority of the Secretary of State."

44. The Commissioner noted that he himself is the third safeguard as he checks, through visits, discussions, investigations and inspections, that warrants have not been issued in contravention of the 1985 Act and that the appropriate procedures have been followed. He pointed out that he saw no case in which the statutory restrictions were deliberately evaded or corners knowingly cut. The Tribunal was noted as being the fourth safeguard and the Commissioner added that in no case which was investigated by the Tribunal did it find that any contravention of the 1985 Act had occurred.

1993 Report

45. The Commissioner indicated that his "clear impression is that at every level up to and including Secretaries of State every effort is made to scrupulously comply with the Act".

II. Private telecommunications systems.

46. The 1985 Act does not apply to private telecommunications systems and there is no general right to privacy at common law in the United Kingdom. (cf. Copping and Skone-James on Copyright, 13th edition, paras. 22-57). Therefore there is no criminal or civil action which can be instituted against a party specifically in respect of interception on a private telecommunications system.

III. OPINION OF THE COMMISSION

A. Complaints declared admissible

47. The Commission has declared admissible the applicant's complaints in relation to alleged interferences with telephone calls made on her office and home telephones.

B. Points at issue

48. Accordingly, the points at issue in the present case are whether there has been a violation of:

- Article 8 (Art. 8) of the Convention as regards the applicant's complaint that the alleged interceptions on her office and home telephones amounted to an unjustifiable interference with her private life;
- Article 10 (Art. 10) of the Convention as regards the applicant's complaint that the alleged interceptions on her office and home telephones amounted to an unjustifiable interference with her freedom of expression;
- Article 13 (Art. 13) of the Convention as regards the applicant's complaint that she had no effective domestic remedy in relation to the alleged interceptions on her office and home telephones; and
- Article 14 (Art. 14) of the Convention as regards the applicant's complaint that she was discriminated against on grounds of her sex and that her attempts to redress this discrimination have been compounded by the way in which she has been treated because of her sex for pursuing such a matter.

C. As regards Article 8 (Art. 8) of the Convention

49. Article 8 (Art. 8) of the Convention, insofar as relevant, reads as follows:

"1. Everyone has the right to respect for his private ... life, ... and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

50. The applicant complains about interceptions of calls made on her home and office telephones and submits that the protections of Article 8 (Art. 8) of the Convention should apply whatever the nature or source of the telephone conversations. In addition, she argues that neither the Interception of Communications Tribunal ("the Tribunal") nor the Commissioner, provided for under the Interception of Communications Act 1985 ("the 1985 Act"), constitute sufficient safeguards of the rights outlined in Article 8 (Art. 8) of the Convention for a number of reasons. In the first place, the 1985 Act does not apply to private telecommunications systems (her office telephones). Secondly, the safeguards set down by that Act, which are applicable to public telecommunications systems (her home telephone), are insufficient due to the limited functions of the Tribunal and the

Commissioner and due to the particular circumstances of her case namely, that it is the police force she accuses of intercepting her telephone conversations.

51. The Government argue that there has been no "interference" with the applicant's private life within the meaning of Article 8 (Art. 8) of the Convention. In this respect, the Government accept that, while the applicant has adduced sufficient evidence to establish a reasonable likelihood that calls made on her office telephones were intercepted, she had no reasonable expectation of privacy in relation to calls made on those telephones. The Government do not accept that the applicant has established such a reasonable likelihood in respect of her home telephone. Alternatively, the Government argue that even if there has been an interference, the aggregate of the protections provided by the 1985 Act are sufficient safeguards for the purposes of Article 8 (Art. 8) of the Convention.

52. The Commission notes that the Government treats the applicant's allegations of interception of calls made on her home telephone as relating to a public telecommunications system and her allegations of interception of calls made on her office telephones as relating to a private telecommunications system. The applicant does not contest this approach adopted by the Government and does not make any allegations of interceptions falling outside of this classification.

1. Office telephones (a private telecommunications system)

(a) Applicability of Article 8 (Art. 8) of the Convention

53. The Commission has first considered whether the applicant can have recourse to the right to respect for private life contained in Article 8 (Art. 8) of the Convention in relation to calls (both personal and business) made on her office telephones.

54. In this respect, the Commission notes that the present case concerns solely the question of covert interceptions of the content of telephone calls in circumstances where the applicant had the use, in an office which she alone occupied, of two telephones one of which was designated for personal telephone calls. Moreover, there is no evidence that the applicant had been expressly precluded from receiving or initiating personal telephone calls on the telephone provided for police work or that she was precluded from engaging in any personal conversation in the course of a business telephone call received or initiated by her.

55. In the first place, the Commission recalls that telephone conversations are covered by the notion of "private life" - as well as the notion of "correspondence" - (Eur. Court H.R., Klass judgment of 6 September 1978, Series A no. 28, p. 21, para. 41).

56. Secondly and as to whether the right to respect for private life can be invoked in relation to telephone calls other than of a personal nature (namely, business), it is recalled that the Court has found that there had been an interference with private life even where telephone tapping covered both business and private calls (Eur. Court H.R., Huvig judgment of 24 April 1990, Series A no. 176-B, p. 41, para. 8 and p. 52, para. 25). The Commission also recalls, by way of analogy, the Court's judgment in the A v. France case (Eur. Court H.R., A v. France judgment of 23 November 1993, Series A no. 277-B) where the Court, in confirming that a telephone conversation also fell within the term "correspondence", did not find that that term admitted of any distinction as to the nature of that "correspondence".

57. Thirdly and as to whether the right to respect for private life can be invoked in view of the fact that the actual source of the telephone calls was the applicant's office, it is recalled that in the Niemietz judgment (Eur. Court H.R., Niemietz judgment of

16 December 1992, Series A no. 251) the Court rejected an argument that the right to respect for private life contained in Article 8 (Art. 8) of the Convention did not afford protection against the search of a lawyer's office. The Commission notes that the office in the aforementioned Niemietz case was owned by the applicant. However, the Commission does not consider that the fact that the applicant's office was provided to her by the police affects the applicability of Article 8 (Art. 8) of the Convention.

58. Accordingly, the Commission considers that the right to respect for private life contained in Article 8 (Art. 8) of the Convention is applicable to the applicant's complaints of interceptions on her office telephones whether the calls in question related to personal matters or to her work.

(b) Merits

59. The Commission recalls that Article 8 (Art. 8) of the Convention provides that there shall be no interference with the rights guaranteed therein unless the interference is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 of Article 8 (Art. 8) and is "necessary in a democratic society" (see, for example, Eur. Court H.R., Huvig judgment, loc. cit., p. 52, para. 25).

60. As to whether there has been such an interference, the Commission notes that the Government accept that the applicant has adduced sufficient evidence to establish a reasonable likelihood that calls made on her office telephones were intercepted. The Commission considers that an examination of the application reveals such a reasonable likelihood and also notes that it is sufficient, in the area of secret measures, that the applicant demonstrates the existence of practices permitting such secret surveillance and of such a reasonable likelihood without the necessity of proving the existence of a file of personal information (Nos. 12175/86 and 12327/86, Comm. Reports 9.5.89, D.R. 67 pp. 88 and 123). Accordingly, the Commission considers that there has been an interference with the applicant's right to respect for her private life.

61. As to whether the interference was "in accordance with the law", the Commission recalls that this phrase has been interpreted by the Court as requiring that the interference must have some basis in domestic law and extends further to the quality of the law (see Eur. Court H.R., Kruslin judgment of 24 April 1990, Series A no. 176-A, p. 20, paras. 26-27, and Huvig judgment, loc. cit., p. 52, paras. 54-55). In terms of the quality of the law, the Commission notes that the law must be compatible with the rule of law in providing a measure of protection against arbitrary interferences by public authorities and, in this context, it must be accessible to the person concerned who must moreover be able to foresee the consequences of the law for him (Eur. Court H.R., the Sunday Times judgment of 26 April 1979, Series A no. 30, p. 31, para. 49, and the Malone judgment of 2 August 1984, Series A no. 82, p. 32, para. 67).

62. In the present case, the Commission notes that the 1985 Act does not apply to a private telecommunications system of which the applicant's telephones at work were part. Neither is there a general right to privacy in common law in the United Kingdom. There is, therefore, no domestic law regulating interceptions of telephone calls on private telecommunications systems.

63. The Commission therefore finds that, in view of this absence of domestic law, there is no "basis in domestic law" for the interference and, accordingly, the interference was not "in accordance with the law" within the meaning of those terms outlined at paragraph 61 above. In the circumstances, the Commission does not find it necessary to go on to consider whether the interference was "necessary in a democratic

society".

2. Home telephone (a public telecommunications system)

64. The applicant maintains that calls made on her home telephone were also intercepted by the Merseyside police. The Government do not contest the applicability of Article 8 (Art. 8) of the Convention in this context but do not accept that the applicant has provided evidence to establish a reasonable likelihood of such interception.

65. The Commission considers, having reviewed all of the applicant's submissions in this respect, that the evidence presented does not indicate a reasonable likelihood that calls made on the applicant's home telephone were intercepted. The Commission does not consider that it can be assumed, from the Government's acceptance of a reasonable likelihood of interception of the applicant's office telephones, that similar actions were reasonably likely to have taken place as regards her home telephone.

66. In this regard, the Commission notes that interceptions by the police of the applicant's calls made from her home telephone for the purpose of obtaining information to assist with the defence of the discrimination proceedings would have been clearly unlawful under the 1985 Act. However, it would not have been unlawful to have intercepted the applicant's office telephone calls. The information given to the applicant in March/April 1991 about the existence of a transcript was not sufficiently specific to preclude its referring to office telephone calls.

67. In such circumstances the Commission does not consider that the circumstances of the case disclose a violation of Article 8 (Art. 8) of the Convention as regards the applicant's home telephone.

CONCLUSIONS

68. The Commission concludes, by 26 votes to 1, that in the present case there has been a violation of Article 8 (Art. 8) of the Convention in relation to the applicant's office telephones.

69. The Commission concludes, unanimously, that in the present case there has been no violation of Article 8 (Art. 8) of the Convention in relation to the applicant's home telephone.

D. As regards Article 10 (Art. 10) of the Convention

70. Article 10 (Art. 10) of the Convention, insofar as relevant, reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to ... receive and impart information and ideas without interference by public authority

71. The applicant submits that her telephone calls were intercepted by the Merseyside police because they wished to gain an advantage in the discrimination proceedings the applicant had issued against them. The applicant would submit that a separate issue arises under Article 10 (Art. 10) of the Convention in view of the motivation behind the interceptions ("litigation espionage"). The Government contend that there has been no interference with the applicant's freedom of expression, as guaranteed by Article 10 (Art. 10) of the Convention or, alternatively, that no separate issue arises under this provision or, alternatively, refer to their submissions made under Article 8 (Art. 8) of the Convention.

72. The Commission considers that the complaint under Article 10

(Art. 10) of the Convention is based on the claim, already raised under Article 8 (Art. 8) of the Convention, that the applicant's calls made on her home and office telephones were intercepted.

73. As regards the applicant's submission that a separate issue arises for consideration under Article 10 (Art. 10) of the Convention as regards her freedom of expression on discrimination issues (in the context of the proceedings taken by her against the police and in light of the alleged motivation behind such interceptions) the Commission recalls the following. The applicant was not prevented from meeting with or contacting her lawyer in order to pursue the discrimination matter through litigation and, in the end, the applicant was in a position to settle the discrimination proceedings, obtaining ex gratia payments to her and an agreement by the Home Office with the Equal Opportunities Commission to update and review appointments procedures and to institute an awards system in relation to equal opportunities projects in the police service.

74. Accordingly, in the opinion of the Commission it is not necessary to consider under Article 10 (Art. 10) of the Convention the complaint of the applicant about interceptions of calls made on her office telephones in view of the above finding that such activity constituted a violation of Article 8 (Art. 8) of the Convention.

75. In addition, the Commission does not consider that the applicant's complaint of interceptions of calls made on her home telephones demonstrates a violation of Article 10 (Art. 10) of the Convention. The Commission has already concluded above that the applicant has failed to establish a reasonable likelihood that any interceptions of that nature took place (cf. paras. 65 and 66 above).

CONCLUSIONS

76. The Commission concludes, unanimously, that in the present case it is not necessary to examine separately the applicant's complaint of a violation of Article 10 (Art. 10) of the Convention as regards her office telephones.

77. The Commission concludes, unanimously, that in the present case there has been no violation of Article 10 (Art. 10) of the Convention as regards the applicant's home telephone.

E. As regards Article 13 (Art. 13) of the Convention

78. Article 13 (Art. 13) of the Convention, insofar as relevant, reads as follows:

"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."

79. The applicant complains that she had no effective remedy as regards her complaints about interceptions of her telephone calls. She submits that the safeguards set down by the 1985 Act are insufficient due to the limited functions of the Tribunal and the Commissioner, due to the inapplicability of the 1985 Act to private telecommunications systems and due to the fact that the body accused of the interceptions is the police. The Government claim that the applicant has no arguable claim or, in the alternative, that the aggregate of remedies provided by the Interception of Communications Act 1985 are in conformity with Article 13 (Art. 13) of the Convention.

80. The Commission recalls the detailed consideration of Article 13 (Art. 13) of the Convention in the case of Silver and others (Eur. Court H.R., Silver and Others judgment of 25 March 1983, Series A

no. 61, p. 42, para. 113) and the resulting principles stated therein:

- (a) Where an individual has an arguable claim to be the victim of a violation of the Convention, he should have a remedy before the national authority in order both to have his claim decided and, if appropriate, to obtain redress;
- (b) the authority referred to in Article 13 (Art. 13) of the Convention must not necessarily be a judicial authority but, if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective;
- (c) although no single remedy may itself entirely satisfy the requirement of Article 13 (Art. 13) of the Convention, the aggregate of remedies provided for under domestic law may do so;
- (d) neither Article 13 (Art. 13) nor the Convention in general lays down for the Contracting States any given manner for ensuring within their internal law the effective implementation of any of the provisions of the Convention, for example, by incorporating the Convention into domestic law; and
- (e) it follows that the application of Article 13 (Art. 13) in a given case will depend upon the manner in which the Contracting State concerned has chosen to discharge its obligation under Article 1 (Art. 1) of the Convention.

81. The Commission considers it appropriate to consider this complaint of the applicant solely in conjunction with Article 8 (Art. 8) of the Convention.

82. The Commission recalls its conclusion above that there has been a breach of Article 8 (Art. 8) of the Convention as regards the applicant's complaint about interceptions of calls made on her office telephones. The Commission also recalls that the applicant has no avenue in domestic law to complain about interceptions on private telecommunications systems, the 1985 Act not being applicable and there being no right to privacy in common law. The Commission therefore finds that the applicant does not have an effective remedy in relation to interceptions of calls made on her office telephones as required by Article 13 (Art. 13) of the Convention.

83. As regards the applicant's home telephone and in view of the opinion expressed above as to the lack of a reasonable likelihood of interception of the applicant's home telephone, the Commission considers that the applicant does not have an arguable claim of a violation of the Convention which warrants a remedy under Article 13 (Art. 13) of the Convention.

CONCLUSIONS

84. The Commission concludes, by 26 votes to 1, that in the present case there has been a violation of Article 13 (Art. 13) taken in conjunction with Article 8 (Art. 8) of the Convention in relation to the applicant's office telephones.

85. The Commission concludes, unanimously, that in the present case there has been no violation of Article 13 (Art. 13) taken in conjunction with Article 8 (Art. 8) of the Convention in relation to the applicant's home telephone.

F. As regards Article 14 (Art. 14) of the Convention

86. Article 14 (Art. 14) of the Convention, insofar as is relevant, reads as follows:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, ...".

87. The applicant complains under Article 14 (Art. 14) of the Convention that she was discriminated against on grounds of sex and that her attempts to redress this discrimination have been compounded by the way in which she has been treated because of her sex for pursuing such a matter.

88. The Commission recalls that this Article protects individuals in analogous situations from a discriminatory difference in treatment in the exercise of the rights and freedoms recognised by the Convention and its Protocols (see, for example, Eur. Court H.R., Darby judgment of 23 October 1990, Series A no. 187, p. 12, para. 31).

89. Insofar as the applicant complains of discrimination in the context of promotion at work, the Commission notes that there is no right to promotion at work guaranteed by the Convention. Insofar as the treatment the applicant complains about is the alleged interception of telephone calls made on her home and office telephones (namely, under Article 14 in conjunction with Article 8 (Art. 14+8) or Article 10 (Art. 14+10) of the Convention), the Commission finds that the applicant has not demonstrated that any such action taken against her reveals a difference of treatment on grounds of her sex. The Commission notes that the applicant in fact submits, in relation to her complaints under Article 8 (Art. 8) of the Convention, that the reason for the alleged interceptions was to assist the defendant police force in the Industrial Tribunal proceedings.

CONCLUSION

90. The Commission concludes, unanimously, that in the present case there has been no violation of Article 14 of the Convention taken in conjunction with Article 8 (Art. 14+8) or Article 10 (Art. 14+10) of the Convention.

G. Recapitulation

91. The Commission concludes, by 26 votes to 1, that in the present case there has been a violation of Article 8 (Art. 8) of the Convention in relation to the applicant's office telephones (para. 68).

92. The Commission concludes, unanimously, that in the present case there has been no violation of Article 8 (Art. 8) of the Convention in relation to the applicant's home telephone (para. 69).

93. The Commission concludes, unanimously, that in the present case it is not necessary to examine separately the applicant's complaint of a violation of Article 10 (Art. 10) of the Convention as regards her office telephones (para. 76).

94. The Commission concludes, unanimously, that in the present case there has been no violation of Article 10 (Art. 10) of the Convention as regards the applicant's home telephone (para. 77).

95. The Commission concludes, by 26 votes to 1, that in the present case there has been a violation of Article 13 taken in conjunction with Article 8 (Art. 13+8) of the Convention in relation to the applicant's office telephones (para. 84).

96. The Commission concludes, unanimously, that in the present case there has been no violation of Article 13 taken in conjunction with Article 8 (Art. 13+8) of the Convention in relation to the applicant's home telephone (para. 85).

97. The Commission concludes, unanimously, that in the present case there has been no violation of Article 14 of the Convention taken in conjunction with Article 8 (Art. 14+8) or Article 10 (Art. 14+10) of the Convention (para. 90).

Secretary to the Commission

(H.C. KRÜGER)

President of the Commission

(S. TRECHSEL)

(Or. English)

DISSENTING OPINION OF MR. H.G. SCHERMERS

I do not agree with the majority of the Commission's finding that conversations over a special network of the police by police officers are to be seen as part of the private life of the officers concerned. The relevant conversations took place in the offices of the police. In this respect the case differs from the Niemietz case (Eur. Court H.R., Niemietz judgment, Series A no. 251-B) where it concerned the private office of the applicant and also from the Huvig case (Eur. Court H.R., Huvig judgment Series A no. 176-B) where, as in Niemietz, the persons responsible for the office had not agreed to any interceptions of conversations. Furthermore, the fact that the expenditure of the telephone was borne by the police also indicates a certain relationship with the service.

Like the majority of the Commission, I am willing to follow the conclusion of the Court in the A. v. France case (Eur. Court H.R., A v. France judgment, Series A no. 277-B), referred to in para. 56, that telephone conversations fall within the term "correspondence". However, I do not think that this supports the argument that telephone calls in the office must be kept confidential. Normally, correspondence from a police office is not the secret of a particular police officer. In many offices all incoming mail is opened and registered. Copies of both incoming and outgoing mail may be made and filed. The superior officers are entitled to look into these files. It would not be unreasonable if, for the same reasons, transcripts should be kept of telephone conversations made in the office. If that were done, confidentiality would also be limited.

A general rule that private telephone conversations in the office should be confidential would also lead to practical problems in more open offices and might lead to difficulties in the relationship of employer and employee or in the hierarchical structure of an organisation which may control the circumstances in which telephone calls may be made from office premises.

Of course, it should not be excluded that in some services private telephone conversations are considered confidential, but I do not accept that the other opinion infringes fundamental human rights.

The Commission found it not necessary to examine separately the applicant's complaint of a violation of Article 10 of the Convention as regards her office telephones. I shared that opinion, though for different reasons. The Commission saw no need as a violation had already been found of Article 8. I see no need because, for the same reasons that I find no violation of Article 8, I find no violation of Article 10.