

Application No. 11553/85
G. Hodgson, D. Woolf Productions Ltd. and
National Union of Journalists

Application No. 11658/85
Channel Four Television Co. Ltd.

against

the UNITED KINGDOM

REPORT OF THE COMMISSION

(adopted on 15 July 1988)

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INTRODUCTION

1. This Report relates to Application No. 11553/85, introduced under Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms by Mr. G. Hodgson, D. Woolf Productions Ltd. and the National Union of Journalists against the United Kingdom and Application No. 11658/85, introduced by Channel Four Television Co. Ltd. against the United Kingdom. The applications were registered on 23 May and 25 July 1985 respectively.

2. The applicants were represented before the Commission by Mr. G. Robertson, counsel, Ms. H. Kitchin, solicitor, National Council for Civil Liberties (NCCL), Ms. E. Forgan and Mr. D. Christopher of Channel Four Television.

3. The United Kingdom Government were represented by Messrs. M. Wood and J. Grainger, Agents, Foreign and Commonwealth Office.

4. On 9 March 1987 the European Commission of Human Rights declared admissible the applicants' complaints under Article 13 of the Convention concerning the alleged lack of an effective remedy under United Kingdom law in respect of their complaint that an order made under Section 4 (2) of the Contempt of Court Act 1981 interfered with their rights under Article 10 of the Convention to impart information.*

5. 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."

6. The Commission found that the parties had reached a friendly settlement of the case and on 15 July 1988 it adopted this Report which, in accordance with Article 30 of the Convention, is confined to a brief statement of the facts and the solution reached.

* This decision is public and can be obtained from the Commission on request.

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

MM. C. A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C. L. ROZAKIS
Mrs. J. LIDDY

PART I

STATEMENT OF THE FACTS

8. In 1984 D. Woolf Productions Ltd. entered into a contract with Channel Four Television to produce a programme entitled "Court Report" to cover the criminal trial of R. v. Ponting, an official secrets case which had attracted wide public interest and was due to commence on 28 January 1985 at the Central Criminal Court, London. The programme "Court Report" was to be screened for 25 minutes on every evening of the trial. Mr. G. M. T. Hodgson was engaged to edit the daily court transcript with the assistance of other members of the National Union of Journalists and to present the programme.

9. It was envisaged that each edition of "Court Report" would consist of studio readings from a transcript of the proceedings which had been checked for fairness and accuracy and actors were engaged to avoid any dramatic re-enactment of the proceedings in the courtroom or any attempt to reproduce the atmosphere of the trial.

10. At the opening of the case, the trial judge made an Order under Section 4 (2) of the Contempt of Court Act that a report of any part of the proceedings in the form proposed by Channel Four be postponed until after the jury had given its verdict in the case. The Order was not opposed by counsel for the prosecution or by counsel for the defence and the trial judge declined to hear counsel on behalf of Channel Four Television and D. Woolf Productions Ltd. on the basis that they had no standing to make an application that the court should reconsider its ruling. The judge considered that there was a danger that the trial of Mr. Ponting would be prejudiced by contemporaneous and edited reports of the day's court proceedings in the form proposed. He considered that members of the jury should decide the case on the evidence as it was heard from the witness box and not from actors on a television programme.

11. Before the Commission the applicants submitted that the restraint imposed upon them by the judge's Order constituted an interference with their right to impart information under Article 10 para. 1 of the Convention. This complaint was declared inadmissible by the Commission in a decision of 9 March 1987.

12. They further complained under Article 13 of the Convention that they had no effective remedy under United Kingdom law in respect of their complaint of a breach of Article 10 of the Convention. They pointed out that the Contempt of Court Act 1981 provides no right to oppose or appeal an Order made in the Crown Court under Section 4 (2) and since the applicants were not parties to the trial, they had no standing to make representations to the trial judge. Nor was it open to them under United Kingdom law to apply to the High Court for judicial review of such an Order.

13. On 2 December 1985 the Commission decided to join both applications, in accordance with Rule 29 of the Rules of Procedure, and to bring the applications to the notice of the respondent Government and invite them to submit written observations on the admissibility and merits of the complaints. The observations of the Government were received on 8 April 1986 and the applicants' observations in reply were received on 3 July 1986.

14. On 3 December 1986 the Commission decided to hold a hearing on the admissibility and merits of the applications. This hearing was held in Strasbourg on 9 March 1987, the applicants being represented by Mr. G. Robertson, counsel, Ms. H. Kitchin, solicitor, NCCL and Ms. E. Forgan and Mr. D. Christopher of Channel Four Television. The Government were represented by Mr. J. Grainger, Agent, Mr. N. Bratza, counsel, and Mr. P. Rodney, Adviser, Lord Chancellor's Department.

15. Following the hearing the Commission declared admissible on the same date the applicants' complaint under Article 13 of the

Convention.

PART II

SOLUTION REACHED

16. Following the decision on the admissibility of the applicants' complaint under Article 13 of the Convention 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.

17. In accordance with the usual practice the parties forwarded their views on the question of a friendly settlement to the Commission. Subsequently a meeting took place in London on 18 March 1988 between the representatives of the parties and the Secretary of the Commission accompanied by a member of the Secretariat. At the meeting, an exchange of views took place between the parties as to the basis of a possible friendly settlement of the case.

18. On 7 July 1988 the Government's Agent, Mr. M. C. Wood, addressed the following letter to the Commission:

"I have the honour to refer to the recent discussions concerning a friendly settlement of the above applications. The Government now propose a friendly settlement on the following basis:

1. The Government have tabled an amendment to the Criminal Justice Bill which, inter alia, provides that any person aggrieved may, with leave, appeal to the Court of Appeal against an order under section 4 or 11 of the Contempt of Court Act 1981 made in relation to a trial on indictment. A copy of the Clause, which was introduced on 16 June 1988, is enclosed, together with a copy of the Solicitor General's statement in the House of Commons introducing the amendment. It is now intended that ... the time limit for the appeal should be fourteen days, with the usual possibility of applying for leave to appeal out of time.

2. The Government will pay a proportion (75%) of the legal costs which have been actually incurred, necessarily incurred and are reasonable as to quantum."

19. On 8 July 1988 Mr. D. Christopher of Channel Four Television sent the following letter to the Commission:

"I refer to the letter that Mr. M. C. Wood of the Foreign and Commonwealth Office wrote to you yesterday and am pleased to confirm that Channel 4 is happy to accept the proposal therein contained by way of friendly settlement."

20. On 11 July 1988 Mr. P. Hunt, Legal Officer, National Council for Civil Liberties, sent a telex to the Commission stating inter alia:

"I have received a copy letter dated 7 July 1988 from Michael Wood to Mr. Krüger in Application No. 11553/85 (Hodgson, Woolf and the NUJ). I am instructed that the applicants agree to settle this matter on the terms found in Mr. Wood's letter of 7 July to Mr. Krüger. ..."

21. At its session on 15 July 1988 the Commission found from the above letters that the parties had reached agreement on the terms of a settlement. The Commission further found that, having regard to Article 28 (b) of the Convention and the proposed amendment to the Criminal Justice Bill providing inter alia for an appeal to the Court of Appeal against an Order made under Section 4 of the Contempt of Court Act 1981, a friendly settlement of the application had been secured on the basis of respect for human rights as defined in the Convention.

For these reasons the Commission adopted the present Report.

Secretary to the Commission

President of the Commission

(H. C. KRÜGER)

(C. A. NØRGAARD)