

DECISION

AS TO THE ADMISSIBILITY

Application No. 19509/92
by CHURCH OF SCIENTOLOGY OF PARIS
against France

The European Commission of Human Rights sitting in private on 9 January 1995,
the following members being present:

MM. H. DANELIUS, Acting President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
S. TRECHSEL
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
D. ŠVÁBY
E. KONSTANTINOV
G. RESS

Mr. M. de SALVIA, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights
and Fundamental Freedoms;

Having regard to the application introduced on 12 August 1991 by CHURCH OF
SCIENTOLOGY OF PARIS against France and registered on 11 February 1992 under
file No. 19509/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a religious association registered in Paris (France). Before the Commission the applicant association is represented by Mr. Douwe Korff, a lawyer practising in Cambridge (United Kingdom).

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 18 January 1984 the applicant association sought to obtain access to files which were alleged to be held by the Criminal Intelligence Department (direction centrale des renseignements généraux) of the French Ministry of the Interior and which the applicant association believes are likely to contain wrongful data on it and on its officials and members.

On 30 January 1984 the Director of the Criminal Intelligence Department refused this request on the ground that the Freedom of Information Act of 17 July 1978 (loi n° 78-753 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal) did not apply to files held by it.

On 2 February 1984 the applicant association appealed to the Commission on Access to Administrative Documents (commission d'accès aux documents administratifs) set up under the Freedom of Information Act.

On 9 February 1984 this Commission informed the applicant association that it was not competent to examine his case since the request concerned access to personal data files to which the Data Protection Act of 6 January 1978 (loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés) applied. It accordingly transmitted the applicant association's request to the Data Protection Commission (commission nationale de l'informatique et des libertés) set up under the Data Protection Act.

On 30 March 1984 the Data Protection Commission informed the applicant association that it, too, was unable to grant access to the files on the ground that, in accordance with Article 4 of the Data Protection Act, the right of access was limited to natural persons (aux seules personnes physiques).

On 9 April 1984 the applicant association lodged an appeal with the Paris Administrative Court (tribunal administratif) which rejected the appeal by a judgment of 13 March 1985 confirming that under the Data Protection Act access to files could not be granted to legal persons.

The applicant association's appeal against this judgment was dismissed by the State Council (Conseil d'Etat) on 15 February 1991.

The State Council considered in particular that the right of access to files which contain personal data, be they computerised, mechanical or manual, was limited to natural persons.

COMPLAINTS

1. The applicant association complains that the denial of access to the probable collection of data on the movement to which it belongs by the Criminal Intelligence Department unrelated to any specific criminal investigations and the widespread dissemination of such data, coupled with the absence of any safeguards against abuse, violated Article 8 of the Convention. The applicant association considers that it is entitled to a "private sphere" and that it can invoke for itself, as a legal entity, and/or on behalf of its members, the right to respect for private life.

The applicant association submits in particular that, as a result of the interpretation of the relevant French legislation, legal persons are, faced with a denial of access to all files on them. That also includes the denial of the right to know whether data on them are held in the files and whether any such data have been passed on to others. Furthermore there are no publicly accessible rules to ensure adherence by the Criminal Intelligence Department to internationally accepted standards in the field of the collection and exchange of data, as set out in the Council of Europe Recommendation on police data.

2. The applicant association also complains that the collecting, storing and use by the police of data on associations, and in particular on religious associations, constitutes a violation of the unhindered exercise of the right to manifest one's religion, of the right to freedom of expression of such associations and their members and of the right of peaceful assembly. In this connection, the applicant association invokes Articles 9, 10 and 11 of the Convention.

3. Furthermore the applicant association complains that the probable collecting and use of criminal intelligence data on its association, unrelated to any inquiries into specific criminal offences, are, if not deliberately, then still in effect, discriminatory on grounds of religion and opinion, and hence in violation of Article 14 of the Convention.

4. Finally, the applicant association complains that, to the extent that a separate issue remains, the absence of adequate and effective guaranties against abuse of the powers of the Criminal Intelligence Department to collect, store, pass on and use data on groups of

individuals, such as the applicant association, discloses a violation of Article 13 of the Convention.

THE LAW

1. The applicant association complains of the refusal of access to files which it assumes are held on it by the Criminal Intelligence Department of the French Ministry of the Interior and which it believes are likely to contain wrongful data on it, its officials and its members. The applicant association alleges a violation of Article 8 of the Convention which states:

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

The Commission recalls that the storing and the release of information relating to an individual's private life, coupled with a refusal to allow any corrections, may raise an issue under Article 8 of the Convention (see Eur. Court H.R., Leander judgment of 26 March 1987, Series A No. 116, p. 22, para. 48). However, for the following reasons no such issue arises in the present case.

Under Article 25 para. 1 of the Convention, the Commission may receive petitions, inter alia, from any non-governmental organisation claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention. The extent to which a non-governmental organisation can invoke such a right must be determined in the light of the specific nature of this right.

It is true that under Article 9 of the Convention a church is capable of possessing and exercising the right to freedom of religion in its own capacity as a representative of its members and the entire functioning of churches depends on respect for this right (see No. 7805/77, Dec. 5.5.79, D.R. 16 pp. 68, 70). However, unlike Article 9, Article 8 of the Convention has more an individual than a collective character, the essential object of Article 8 of the Convention being to protect the individual against arbitrary action by the public authorities (see, for example, Eur. Court H.R., Keegan judgment of 26 May 1994, Series A no. 290, pp. 17-18, para. 44; Kroon judgment of 27 October 1994, to be published in Series A no. 297-C, para. 31).

The Commission has held in the case of Open Door and Dublin Well Woman against Ireland that a company, namely the Open Door Counselling Ltd., could not complain on behalf of their clients, or women in general and, thus, had no personal right to respect for private life within the meaning of Article 8 of the Convention (see Comm.

Report 7.3.91, para. 64, Eur. Court H.R., Series A no. 246-B, p. 61). On the other hand, where a search was directed solely against business activities, the Court did not invoke such a consideration as a ground for excluding the applicability of Article 8 under the heading of "private life" (see Eur. Court H.R., Chappell judgement of 30 March 1989, Series A no. 152-A, pp. 12-13, para. 26 and pp. 21-22, para. 51; Niemitz judgment of 16 December 1992, Series A no. 251-B, p. 33, para. 29).

The Commission does not find it necessary in the present case to examine exhaustively to what extent a legal person may invoke the right to respect for private life within the meaning of Article 8 of the Convention.

It observes that the applicant association seeks access to files containing data of its members, i.e. of private persons. It recalls that the French authorities do not deny private persons access to data concerning them. In these circumstances, even assuming that Article 8 of the Convention applies, the Commission does not consider that to deny the applicant association access to those files constitutes a lack of respect for the applicant association's own private life. The Commission accordingly finds no appearance of a violation of Article 8 in this respect.

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicant association complains under Articles 9, 10 and 11 of the Convention that the probable collecting, storing and use of by the police of data on associations and in particular on religious associations constitute a breach of its right to manifest its religion, of the right of such associations and their members to freedom of expression and of its right to freedom of association.

However, the Commission does not consider that an issue arises under these Articles in the present case. In reaching this conclusion it notes that it has not been shown that either the applicant association or its members have been prevented in any way as a consequence of the alleged storing of data from exercising the rights guaranteed by the above provisions. The Commission accordingly finds that there is no appearance of a violation of Articles 9, 10 and 11 of the Convention.

It follows that these complaints are manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. The applicant association complains furthermore that the probable collection of data on minority groups, itself being one such group, is discriminatory on grounds of religion and opinion and hence in violation of Article 14 of the Convention.

The Commission does not find that the applicant association was subjected by the denial of access to files presumably held by the French Intelligence Department to any treatment under domestic law different from that to which others in a comparable position were exposed. In these circumstances the Commission considers that the

applicant association did not suffer any discrimination in the enjoyment of its rights under Articles 8, 9, 10 and 11, contrary to Article 14 of the Convention.

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

4. The applicant association finally invokes Article 13 of the Convention, which provides that:

"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."

The Commission recalls however that Article 13 does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p.23, para. 52).

The Commission finds that the applicant association cannot be said, in the light of its findings above, to have an "arguable claim" of a violation of its Convention rights.

It follows that this complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary
to the Commission

Acting President
of the Commission

(M. DE SALVIA)

(H. DANELIUS)