

...

THE FACTS

The applicants, Ms Rosemary Fairfield, daughter of Mr Harry Hammond, Mr Andrew Tredea and Mr Geoffrey Cox, executors of Mr Hammond's estate, are United Kingdom nationals, who were born in 1959, 1959 and 1956 and live in Fordingbridge, Birmingham and Poole respectively. They were represented before the Court by Mr P. Conrathe, a solicitor practising in Croydon.

A. The circumstances of the case

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

Mr Harry Hammond, born in 1932, was an evangelical Christian who had been preaching for twenty years. His religious beliefs were deeply held and he had a desire to convert others to his way of thinking.

During the summer of 2001, Mr Hammond had a large double-sided sign made, bearing the words "Stop Immorality", "Stop Homosexuality" and "Stop Lesbianism". The sign, attached to a pole, also bore in each corner the words "Jesus is Lord".

Prior to 13 October 2001 Harry Hammond had on at least one occasion preached in public while displaying the sign and had received a hostile reaction from members of the public, some of whom attempted to deface or destroy the sign.

On the afternoon of Saturday, 13 October 2001, Harry Hammond travelled by bus into Bournemouth. He covered the sign with a plastic bin liner for the trip as he believed, in light of previous reactions, that it might provoke a disturbance if displayed inside the bus. He then took up position in The Square, a pedestrian area of the town centre, and began preaching, holding up the sign.

A group of thirty to forty people gathered around him, arguing and shouting. Some were angry, others aggressive or distressed; some threw soil at him. At one point, someone tried to snatch the sign away from him and it struck someone on the head. A struggle ensued during which Harry Hammond fell to the ground. He got up and continued preaching, holding up the sign. At this point, someone poured water over his head.

Two police constables, Ms Gandy and Mr Elliott, arrived at the scene. PC Gandy found the crowd to be angry, agitated and insulted. She asked Harry Hammond to put away the sign and leave. He refused. He declared that he was aware that people found the sign insulting as he had had a similar reaction previously. PC Elliott was of the opinion that it was not

necessary for the police to take any action. PC Gandy took the view that he was provoking violence and arrested him for breach of the peace.

On 4 December 2001 Harry Hammond was charged with an offence under the Public Order Act 1986, in that he had displayed a sign which was threatening, abusive or insulting within the hearing or sight of a person likely to be caused harassment, alarm or distress, contrary to section 5(1) of the Act.

The case was heard before magistrates on 23 and 24 April 2002. On 24 April 2002 the magistrates convicted Harry Hammond, finding that he had known that insult, distress and disturbance were likely to be caused but had refused to put away the sign or leave when requested. He was fined 300 pounds sterling, with prosecution costs. The sign was confiscated.

Mr Hammond appealed to the High Court by way of case stated. In their statement of case dated 9 July 2002, amended on 7 January 2004, the magistrates declared that they had considered his Convention rights but found that there had been a pressing social need to restrict his freedom of expression to prevent disorder. They gave the following reasons.

(a) The words displayed on the sign were in fact insulting and caused distress to persons who were present.

(b) The appellant was aware that the words on the sign were insulting; he admitted this to PC Gandy. His awareness was also demonstrated by his covering the sign with a black plastic bin liner while travelling on the bus and acknowledging that he had received a similar reaction in the past.

(c) The restriction on the appellant's right to freedom of expression had the legitimate aim of preventing disorder in view of the reaction of people in the crowd to the sign.

(d) There was a pressing social need for the restriction and the restriction corresponded to that need. The words on the appellant's sign were directed specifically towards the homosexual and lesbian communities, implying that they were immoral and there was a need to show tolerance towards all sections of society. The sign was displayed in the town centre on a Saturday afternoon, provoking hostility from members of the public.

(e) The interference with the appellant's right to freedom of expression by prosecuting him was a proportionate response in view of the fact that his behaviour went beyond legitimate protest, was provoking violence and interfered with the rights of others.

(f) Although the appellant knew that insult, distress and disturbance were likely to be caused by using the placard, having received a similar reaction in the past, he refused to put away the sign or leave at PC Gandy's request.

On 16 August 2002 Harry Hammond died. The executors of his estate were granted permission on 10 November 2002 to continue the appeal.

After a hearing on 13 January 2004, the Divisional Court dismissed the appeal.

Lord Justice May held, *inter alia*:

“... The essential grounds of appeal ... are firstly that the justices were wrong and misdirected themselves in finding that the words on the sign were insulting and secondly, that a proper reading of Articles 9 and 10 of the Convention should have led to the conclusion that the appellant should have been acquitted of this offence. The precise intellectual route by means of which that, it is submitted, should be achieved can, in my judgment, be addressed by reference to the question of reasonableness. ...

... It is submitted that no reasonable tribunal of fact could conclude that the words on the sign went beyond legitimate expression and that they were something more than an affront or disrespectful is not sustained. There is no element of stereotyping, no element of gratuitous or gross abuse. ...

... I have not found this question easy because it is certainly correct that the words on the sign are short and, so far as they go, are not expressed in intemperate language. ... but I come to the clear conclusion that it was open to the magistrates to reach the conclusion they did, not least because the words appear to relate homosexuality and lesbianism with immorality. The justices themselves take this into consideration when they say that the words on the appellant's sign were directed specifically towards the homosexual and lesbian community, implying that they were immoral. Accordingly, not without hesitation, I have reached the conclusion that it was open to the justices to reach the conclusion ... that these words on the sign were, in fact, insulting.

I have also considered whether in light of Article 10, in particular but also taking account of Article 9 of the Convention, the justices should have concluded that Mr Hammond had established that his conduct was reasonable. He was, after all, according to his understanding, exercising his right of freedom of expression of views which may or may not have been acceptable to those who were passing by but, nevertheless, one had to bear in mind the cardinal importance of freedom of expression in a society such as ours. Nevertheless, I have concluded that the justices in their reasons have not only considered the questions which they were obliged to consider ... and have reached a conclusion that it was open to them to reach, for the reasons they gave, that the appellant's conduct was not reasonable.”

The Divisional Court refused to certify that a point of law of public importance arose to be considered by the House of Lords. Its decision was therefore final.

B. Relevant domestic law and practice

The relevant parts of section 5 of the Public Order Act 1986 provide:

“(1) A person is guilty of an offence if he –

...

(b) displays any writing or sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

...

(3) It is a defence for the accused to prove –

...

(c) that his conduct was reasonable.”

Section 6 is relevant as regards the mental element. Section 6(4) provides:

“A person is guilty of an offence under section 5 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly.”

COMPLAINTS

The applicants complained under Articles 9 and 10 of the Convention that the arrest and conviction of Harry Hammond infringed his freedom of religion and freedom of expression. He had been prevented from teaching his religion by preaching and penalised for the content of his message and for expressing his opinion, although he had not used offensive or degrading language or himself incited violence. While his message was not well received by some, his freedoms could not be restricted simply because of the intemperate or disorderly reactions of others.

THE LAW

The applicants complained that Harry Hammond's arrest and conviction infringed Articles 9 and 10 of the Convention which protect freedom of thought, conscience and religion and freedom of expression respectively.

The Court observes that Harry Hammond died on 16 August 2002. This application was lodged on 2 June 2004 by his daughter and the executors of his estate. The executors relied on the fact that the Divisional Court granted them leave to pursue the appeal after Mr Hammond's death as evidencing their standing and interest and his daughter relied on the approach in *Dalban v. Romania* ([GC], no. 28114/95, § 39, ECHR 1999-VI) where the Court held that the applicant's widow had a legitimate interest in obtaining a ruling that her husband's conviction constituted a breach of the right to freedom of expression.

The Court notes, however, that a person, non-governmental organisation or group of individuals must, in order to be able to lodge an application

under Article 34, claim “to be the victim of a violation ... of the rights set forth in the Convention ...”. Article 34 requires that an individual applicant should claim to have been actually affected by the violation he alleges (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 90-91, §§ 239-40, and *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, pp. 17-18, § 33); it does not institute for individuals a kind of *actio popularis* for the interpretation of the Convention or permit individuals to complain against a law simply because they feel that it contravenes the Convention (see *Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142, pp. 15-16, § 31, and *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI). The same applies to events or decisions which are alleged to infringe the Convention.

The Court reiterates that the existence of a victim of a violation, that is to say, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX). The present case must therefore be distinguished from *Dalban* (cited above) which was introduced by the applicant himself and only continued by his widow after his subsequent death. Similarly, although in *Karner* (cited above) the Court held that a case could be continued after the death of an applicant, and even in the absence of heirs wishing to continue, where the issues transcended the interests of the applicant and raised an important question of public interest relevant to human rights standards in Contracting States, it may be noted that the applicant had also died after the introduction of the application before the Convention institutions. While it is also true that individuals who are the next-of-kin of persons who have died in circumstances giving rise to issues under Article 2 of the Convention may apply as applicants in their own right, this is a particular situation governed by the nature of the violation alleged and considerations of the effective implementation of one of the most fundamental provisions in the Convention system.

Accordingly, the Court finds that the applicants in this case do not have the requisite standing under Article 34 of the Convention and that the application must be rejected as incompatible *ratione personae* with the provisions of the Convention in accordance with Article 35 §§ 3 and 4.

For these reasons, the Court unanimously

Declares the application inadmissible.