

APPLICATION/REQUÊTE N° 10471/83

B. v/the UNITED KINGDOM

B. c/ROYAUME-UNI

DECISION of 9 December 1985 on the admissibility of the application

DÉCISION du 9 décembre 1985 sur la recevabilité de la requête

Article 6, paragraph 1 of the Convention: A dispute concerning an owner's authorised use of land for purposes other than those listed in the relevant rules does not determine the owner's civil rights.

A decision on the question whether an owner's use of land complies with the relevant rules determines civil rights.

The right of access to court has not been denied where procedural complaints regarding an administrative decision in the matter may be put to the court (the High Court) in an appeal on points of law.

Article 6, paragraphe 1, de la Convention : *Un litige concernant l'autorisation d'utiliser un terrain dont on est propriétaire à des fins autres que celles prévues par la réglementation applicable, ne porte pas sur des droits de caractère civil de l'intéressé.*

Une décision sur le point de savoir si l'usage d'un terrain par son propriétaire est conforme à la réglementation applicable, porte sur des droits de caractère civil.

Il n'y a pas refus du droit d'accès à un tribunal lorsque la décision administrative rendue à ce sujet peut faire l'objet, devant un juge (la High Court), d'un recours en examen de la légalité.

Summary of the relevant facts

(français : voir p. 117)

In 1971, the applicant bought two plots of agricultural land with general planning permission under the General Development Order 1963 ("the 1963 Order") to use the land inter alia as a caravan site for not more than 28 days per year. On 6 April 1972 a Direction was made by the local District Council withdrawing the general planning permission provided for in the General Development Order.

Also in 1972, the applicant's right under para. 2 of Schedule I to the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") was removed by Order ("the 1972 Order") with the result that a licence was thenceforth needed for use of the land as a caravan site. In 1973 the applicant bought a further plot of agricultural land.

On the plots, the applicant had a caravan in which he kept garden tools which he used for horticulture. The local authority considered that the applicant had changed user of the land from agricultural to horticultural and an enforcement notice was served under Section 87 of the Town and Country Planning Act 1971 ("TCPA"). The applicant appealed and the Secretary of State, on an inspector's report, quashed the enforcement notice on 24 November 1981, but did not grant planning permission because the land was in a rural area.

A fresh enforcement notice was issued in 1982 against which the applicant also appealed. The appeal was rejected on 16 November 1982. The applicant did not appeal under Section 246 of the TCPA.

THE LAW (Extract)

1. The applicant complains first that the decisions of the Secretary of State confirming the enforcement notices issued against him in respect of his use of his land were not in conformity with Article 6 para. 1 of the Convention. As far as material this Article provides :

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

The applicant contends that the decisions of the Secretary of State in relation to the enforcement notice directly affected his private rights and his use of his land, but that the Secretary of State cannot be regarded as a "tribunal" within the meaning of the above provision.

The Commission recalls its established case-law, and that of the Court, to the effect that Article 6 para. 1 of the Convention covers all proceedings the result of which is decisive for private rights and obligations.

The decisions in the present case directly affected the applicant's use of his land and were decisive for the question whether he was entitled to retain a caravan on the

land for the storage of gardening implements, as an ancillary aspect of his non-commercial cultivation of the land and its use for recreational enjoyment. The question which was determined by the Secretary of State was whether, on the facts of the case, the use which the applicant made of the land was characterisable as "agricultural use", which was the existing planning user of the land, or whether the applicant's purposes constituted a change of use, for which planning permission was required. In accordance with an interpretative ruling of the Secretary of State of 6 March 1979, the applicant's use of the land did not fall within the category of agricultural use, and he therefore required planning permission for it. His application for planning permission, which was deemed to have been made by virtue of his appeal against the enforcement notice, was refused.

The Commission recalls its interpretation of Article 6 para. 1 in its report in Application No. 7598/76, *Kaplan v. the United Kingdom* (D.R. 21 p. 5). Having examined the scope and effect of the Court's interpretation of this provision in the *Ringeisen and König* judgments (Series A no. 13, paras. 88-89 and 94), and the extent of administrative decisions, particularly with regard to the use of land, in the High Contracting Parties to the Convention, the Commission concluded:

"Article 6 does not ... prohibit the conferment on public authorities of powers to take action affecting the private rights of citizens. It does not go so far as to provide that all acts, decisions or measures which affect private rights must themselves be taken by a tribunal." (*ibid.* para. 151)

The Commission must therefore consider whether the claim which the applicant makes relates to a civil right within the meaning of Article 6 para. 1 of the Convention. The applicant's right to enjoy his property was circumscribed at the time when he purchased each of the plots by the regulations on the authorised use of the plots under the terms of the relevant planning legislation. Such restrictions on the use of land are a common feature of the legal and administrative structure of the purchase and use of land in the legal systems of the member States of the Council of Europe. As a result of these provisions, at the time of his purchase of the plot, the applicant enjoyed the right to use the plots for agricultural purposes. This right derived from the established use of the land, recognised in accordance with the TCPA.

It appears that the applicant also enjoyed certain other limited opportunities to use the land on a restricted basis under the terms of the 1953 Order and para. 2 of the 1960 Act. These advantages were withdrawn by the Direction made on 6 April 1972 and by the 1972 Order respectively, but the Commission notes that these advantages did not amount to the right to use the land in the way in which the applicant sought for horticultural purposes, or to place a caravan on the land throughout the year.

In these circumstances it appears that, in seeking to use the land for horticultural purposes and in seeking to place a caravan on the land, the applicant was

required by the provisions of the 1971 Act to apply for planning permission and thereby to seek permission for the use of the land for a more extensive, or different purpose from that which he already enjoyed.

The conditions for granting such permission are those provided for in the legislation which regulates the use of land in accordance with public law.

In these circumstances the Commission finds that the question of the grant of planning permission did not involve the determination of the applicant's private rights in relation to the land, but a question of the application of public law regulations to its permitted use. It follows that the question of the grant of planning permission for the use of the land for other than agricultural purposes did not involve a determination of the applicant's civil rights and that the applicant's complaint is accordingly incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27 para. 2.

2. The Commission must also consider whether a civil right was involved in the examination of the question whether the applicant's use of the land fell within the scope of agricultural use.

In the exercise of the legal powers vested in the Secretary of State in determining the applicant's appeal against the enforcement notice, the Secretary of State considered the inspector's recommendations and the applicant's objections. He took a decision in the exercise of the legal powers conferred on him under the TCPA, as to whether the applicant's use of the land fell within the existing planning permission. As such this assessment was decisive for the applicant's private law rights as to the permitted use of his land. It follows that the applicant's civil rights were at issue to the extent that a legal dispute could arise as to the correctness in law of the Secretary of State's decision.

With regard to this question the Secretary of State followed the interpretative ruling given on 6 March 1979, to the effect that horticulture or leisure use of land was distinct from agricultural use, and hence constituted a change of use, requiring planning permission. This was a question of legal interpretation, as to the meaning and scope of "agricultural use" and directly affected the applicant's right to use the land. However, the applicant does not contend that he was unable to challenge the Secretary of State's application of the interpretative ruling but merely that his arguments for so doing would be rejected. Under Section 246 of the TCPA, this was a question of law which could have been appealed to the High Court for review.

The applicant also complains that the Secretary of State was biased in determining his appeal and had a vested interest in concluding that the local authority's actions were correct. Such a challenge could, however, also have been brought before the High Court under Section 246 of the TCPA.

In these circumstances the Commission finds that the applicant had the opportunity to challenge the lawfulness of the decision of the Secretary of State in finding that his use of the land did not fall within the authorised use of the land which he had enjoyed when he acquired it or that the Secretary of State was biased. Accordingly on the facts of the present case the Commission finds that the applicant had available to him access to a court for the determination of the complaints which he makes. It follows that it is not established that the applicant was denied a fair hearing by an impartial tribunal as required by Article 6 para. 1 of the Convention and that this aspect of his complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

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