

COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

of Application No. 3798/68

by the C OF S OF C
against the United Kingdom

The European Commission of Human Rights sitting in private on 17th December, 1968, under the presidency of Mr. F. ERMACORA (Rule 8 of the Commission's Rules of Procedure), and the following members being present:

MM. F. CASTBERG
G. SPERDUTI
J. E. S. FAWCETT
T. BALTA
W. F. DE GAAY FORTMAN
P. P. O'DONOGHUE
P. O. DELAHAYE
T. B. LINDAL

Mr. A. B. McNULTY, Secretary to the Commission

Having regard to the application lodged on 23rd September, 1968 by the C OF S OF C against the United Kingdom and registered on 25th September, 1968 under file No. 3798/68;

Having regard to the report provided for in Rule 45, paragraph 1, of the Rules of Procedure of the Commission;

Having deliberated,

THE FACTS

Whereas the facts presented by the applicant corporation may be summarised as follows:

The applicant is a corporation incorporated under the laws of the State of California in the United States of America on 18th February, 1954 and registered in Great Britain under Part X of the English Companies Act, 1948. The headquarters of the United Kingdom and Commonwealth Branch is Saint Hill Manor, East Grinstead, Sussex, England. It is represented by Messrs. Lawrence Alkin & Co., solicitors practising in London.

It is stated that the applicant corporation was incorporated for exclusively religious and educational purposes. It was empowered by its Articles of Incorporation "to resolve the travail and difficulties of members of congregations, as they may appertain to the spirit; to instruct in spiritual healing acts and other matters within the creed of the Church of American Science; to conduct seminaries and instructing groups; to create congregations and have other powers similar to those of the Church of American Science; and to propagate the religious faith known as Scientology".

It appears that the applicant corporation has adherents in various places of the world and it was therefore decided in 1966 to establish at East Grinstead the Hubbard College of Scientology as the main educational centre and seminary for its teachings. This establishment had until recently been accepted by government departments of the United Kingdom Government as an educational establishment; in particular, it had been so regarded by the Home Office for the purpose of implementing that department's policy towards the admission into, and subsequent control in, the United Kingdom of aliens and of Commonwealth citizens who were students attending courses at the Church's educational establishment in the United Kingdom.

However, on 25th July, 1968, the Minister of Health for the Government of the United Kingdom submitted a written answer to a parliamentary question regarding the activities of scientologists in the United Kingdom. In his answer the Minister described scientology as being a pseudo-philosophical cult the practice of which was potentially harmful to its adherents.

He relied on a report published in 1965 in the State of Victoria, Australia (the Anderson Report on Scientology) and on certain other evidence available in the United Kingdom which is, however, not disclosed in the Minister's answer. He explained that scientology "alienates members of families from each other and attributes squalid and disgraceful motives to all who oppose it; its authoritarian principles and practices are a potential menace to the personality and well-being of those so deluded as to become its followers; above all, its methods can be a serious danger to the health of those who submit to them". The Minister concluded that, although there was no power under existing law to prohibit the practice of scientology, the Government would take all steps within their power to curb its growth. These were as follows:

- (a) The Hubbard College of Scientology, and all other scientology establishments, will no longer be accepted as educational establishments for the purposes of Home Office policy on the admission and subsequent control of foreign nationals;
- (b) foreign nationals arriving at United Kingdom ports who intend to proceed to scientology establishments will no longer be eligible for admission as students;
- (c) foreign nationals who are already in the United Kingdom, for example as visitors, will not be granted student status for purpose of attending a scientology establishment;
- (d) foreign nationals already in the United Kingdom for study at a scientology establishment will not be granted extensions of stay to continue these studies;
- (e) work permits and employment vouchers will not be issued to foreign nationals (or Commonwealth citizens) for work at a scientology establishment);
- (f) work permits already issued to foreign nationals for work at a scientology establishment will not be extended.

It is stated that, following this statement, there have been a number of instances where the declared policy of excluding, or extruding, from the United Kingdom aliens or Commonwealth citizens who are members of the Church has been implemented by the Naturalisation and Immigration Department of the Home Office. In particular, some eight hundred overseas delegates to an international congress of the C of S held on 17th/18th August, 1968 at Croydon, Surrey, England, were banned from entering the United Kingdom. The C of S was informed by the United Kingdom Authorities that "consistent with the recent statement of Government policy foreign nationals seeking admission to the United Kingdom in order to attend the congress will not be granted leave to land".

The applicant corporation's complaints under the Convention are set out as follows:

- (a) Violation of its own rights and/or of the collective rights of its members under Article 9, paragraph (1), to the right to freedom of thought, conscience, and religion for all members and to its rights and/or those of its members to manifest its and their religion or beliefs in teaching, practice and observance through the religious, educational or other establishments of the applicant corporation in the United Kingdom;
- (b) violation of its own rights and/or of the collective rights of its members under Article 14 to the enjoyment of the rights and freedoms set forth in Article 9, paragraph (1), without discrimination on the grounds of the religion or beliefs of the members of the applicant corporation;
- (c) violation of its rights under Article 6 in the determination of its civil rights to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law in that:
 - (i) the determination of its civil rights has been conducted entirely administratively;
 - (ii) the Minister of Health has declined to hold an inquiry into the complaints of the Church of Scientology that the Church's rights and the rights of its members are being infringed;

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- (iii) the C of S has never been afforded the opportunity of having the evidence, which the Minister of Health says has been placed before him, tested by its legal representatives; and
- (iv) the C of S has no possibility of resorting, whether by way of appeal or otherwise, to an independent and impartial tribunal;
- (d) violations of its rights and/or of the rights of its members under Article 13 to an effective remedy before a national authority for violation.

The applicant corporation requests a ruling that it has been, and is continuing to be, discriminated against in respect of the enjoyment of its and its members' rights to freedom of thought, conscience and religion.

It alleges that there are no domestic remedies available under English law to challenge either the parliamentary statement of the Minister of Health, dated 25th July, 1968 or generally the administrative implementation of Government policy in that regard, nor is there any method of obtaining judicial review of any administrative decision refusing an alien or Commonwealth citizen leave to land in the United Kingdom.

THE LAW

Whereas the application contains specific complaints under Articles 6, 9, 13 and 14 of the Convention; whereas the Commission has also examined, ex officio, these allegations in connection with Article 2 of the First Protocol;

whereas the Commission observes that the application is brought both by and on behalf of the C OF S
OF C , a corporation, and in effect, by and on behalf of its individual members; whereas, therefore, the Commission has considered the complaints in turn as having been made by the C and by its individual members;

I.

Whereas, first, the Commission examined the application insofar as it is brought by and on behalf of the C OF
S OF C as such, being a corporation

established in the United States of America, State of California, and registered in the United Kingdom under the Companies Act, 1948; whereas the applicant corporation complains that its own rights to freedom of thought, conscience and religion have been infringed by the policy adopted by the United Kingdom Government;

whereas Article 9, paragraph (1), of the Convention guarantees to everyone these rights, including the right to manifest his religion or belief, in worship, teaching, practice and observance, and allows an interference with these rights only under the conditions set forth in paragraph (2) of that provision; whereas Article 2 of the First Protocol provides that no person shall be denied the right to education;

whereas it is true that, under Article 25, paragraph (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 which has recognised the Commission's competence to receive such petitions, of the rights set forth in the Convention; whereas the Commission considers, however, that a corporation being a legal and not a natural person, is incapable of having or exercising the rights mentioned in Article 9, paragraph (1), of the Convention and Article 2 of the First Protocol;

whereas it follows that, in this respect, the application is incompatible with the provision of the Convention and must be rejected in accordance with Article 27, paragraph (2), thereof;

Whereas, the applicant corporation also invokes Article 14 of the Convention in this respect; whereas this provision prohibits any discrimination on the grounds mentioned therein "of the rights and freedoms set forth in this Convention"; whereas the Commission has just found that it is not possible for a corporation to enjoy the rights and freedoms set forth in Articles 9 of the Convention or 2 of the First Protocol;

whereas it follows that, in this respect, the application is equally incompatible with the provisions of the Convention and must be rejected in accordance with Article 27, paragraph (2), thereof;

Whereas, furthermore, the applicant corporation alleges that Article 6 of the Convention has been violated in that it was denied the right to a determination by a court of law of the lawfulness of the measures introduced by the responsible Minister;

whereas Article 6, paragraph (1) of the Convention provides that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"; whereas it is clear that the procedural rights guaranteed under this provision may be had and exercised by a legal as well as a natural person; whereas, under the terms of Article 6, paragraph (1), of the Convention, the rights secured in this provision relate to the determination of civil rights and obligations or criminal charges only;

whereas it is clear that the applicant corporation is not seeking the determination of any criminal charge against it;

whereas, therefore, the Commission is called upon to decide whether or not the question in the present case, namely the lawfulness of the measures introduced by the Minister of Health, involves the determination of a "civil right" within the meaning of Article 6, paragraph (1) of the Convention;

whereas, it emerges clearly from the ministerial statement made in Parliament on 25th July, 1968, that the essence of the measures in issue is to refuse to the Hubbard College of Scientology, and all other scientology establishments, recognition as educational establishments for the purpose of the execution of Home Office policy on the admission and subsequent control of foreign nationals;

whereas the recognition of an educational establishment for the purpose just mentioned is a discretionary act by a public authority; whereas, therefore, the Commission finds that the measures introduced by the responsible Minister, as well as his refusal to hold an inquiry or to disclose evidence, are of an administrative order and do not as such involve the determination of a civil right within the meaning of Article 6, paragraph (1), of the Convention;

whereas it follows that this part of the application is also incompatible with the provisions of the Convention and must be rejected in accordance with Article 27, paragraph (2), of the Convention;

Whereas, insofar as the applicant corporation finally complains that its right under Article 13 of the Convention to an "effective remedy before a national authority" has been violated, it is to be observed that the said right relates exclusively to a remedy in respect of a violation of one of the rights and freedoms set forth in the Convention; whereas the Commission has just found that the Articles of the Convention invoked by the applicant corporation are not applicable to the present case; whereas it follows that the complaint under Article 13 is likewise incompatible with the provisions of the Convention and must be rejected in accordance with Article 27, paragraph (2), thereof;

II.

Whereas, secondly, the Commission has examined the application insofar as it is brought by or on behalf of the individual members of the Church; whereas it is to be observed that the identity of these members has not been disclosed by the applicant corporation; whereas, under Article 27, paragraph (1) (a), of the Convention, the Commission may not deal with any petition submitted under Article 25 which is anonymous; whereas, consequently, the complaints made by or on behalf of the members must be rejected on that ground;

Whereas, however, assuming that this procedural defect were to be corrected, the Commission finds that the application is inadmissible on other grounds as set out below;

Whereas the applicant corporation complains that the rights of the members in respect of religion and belief under Article 9, paragraph (1), of the Convention have been violated by the measures introduced by the responsible Minister; whereas the Commission observed that the measures concerned are confined, insofar as they affect the members of the CHURCH, to a denial or withdrawal of student status, the refusal or termination of work permits and employment vouchers, and to the refusal of extensions of stay within the United Kingdom to continue studies at scientology establishments; whereas these measures do not prevent the members, whether resident or coming from abroad, from attending the Hubbard College of Scientology or other branches of the CHURCH in the United Kingdom, or otherwise manifesting their religion or belief; whereas, consequently, an examination of the case as it has been submitted does not

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disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular in Article 9; whereas it follows that this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2), of the Convention;

Whereas, insofar as the members affected are foreign nationals outside the United Kingdom, or foreign nationals already resident in the United Kingdom, having student status, work permits or employment vouchers, or foreign nationals admitted for temporary residence, and are prevented by the measures introduced from respectively entering the United Kingdom or continuing to reside therein, it is to be observed that the Convention, under the terms of Article 1, guarantees only the rights and freedoms set forth in Section I of the Convention; and whereas, under Article 25, paragraph (1) only the alleged violation of one of those rights and freedoms by a Contracting Party can be the subject of an application presented by a person, non-governmental organisation or group of individuals; whereas otherwise its examination is outside the competence of the Commission ratione materiae; whereas the Commission has already stated in a number of decisions that a general right of foreign nationals to enter or to reside in a country other than their own is not, as such, a right guaranteed by any provision of the Convention (cf. Applications No. 214/56, Yearbook II, p. 224, and No. 3325/67, Collection of Decisions, Vol. 25, pages 117, 121);

Whereas the Commission has also considered this complaint in the light of Article 2 of the Protocol which was interpreted in the Case "relating to certain aspects of the laws on the use of languages in education in Belgium" (hereinafter referred to as the "Belgian Linguistic Case") which was decided by the European Court of Human Rights on 23rd July, 1968; whereas the Court observed that the provision in Article 2 of the First Protocol that "no one shall be denied the right to education", served merely to guarantee "to persons subject to the jurisdiction of the Contracting Parties the right, in principle, to avail themselves of the means of instruction existing at a given time. The Convention lays down no specific obligations concerning the extent of these means and the manner of their organisation or subsidisation";

whereas, in the present case, the Commission finds that the Government of the United Kingdom is accordingly not obliged to recognise or to continue to recognise any particular institution, including that of the applicant corporation, as an educational establishment; whereas it follows that, in this respect, the application is manifestly ill-founded within the meaning of Article 27, paragraph (2), of the Convention;

Whereas the applicant corporation further alleges a discrimination, within the meaning of Article 14 of the Convention, between its members and the members of other religious groups;

Whereas it has already been stated that Article 14 only prohibits discrimination with regard to the enjoyment of the rights and freedoms set forth in the Convention and the Protocols;

Whereas, insofar as the members are foreign nationals outside the United Kingdom seeking admission in order to proceed to studies at scientology establishments, the Commission has already found that a right of a foreign national to be admitted to a country other than his own is not as such guaranteed by any of the provisions of the Convention or Protocol; whereas it follows that the exclusion or restriction upon entry or residence of foreign nationals cannot constitute discrimination in respect of a right or freedom guaranteed by the Convention or Protocols; whereas it follows that, in this respect, the application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2), thereof;

Whereas, insofar as the members, being either foreign nationals or citizens of the United Kingdom, are resident in the United Kingdom, the Commission examined the question whether, in relation to other religious groups, there has been discrimination as to the members' right to freedom of thought, conscience and religion under Article 9, paragraph (1), of the Convention; whereas the Commission has already stated that the measures introduced by the responsible Minister do not restrict the rights and freedoms guaranteed under that provision; whereas, therefore, members of the CHURCH enjoy their rights under that Article to the same extent as members of other religious groups; whereas, consequently, there can be no discrimination in this respect regardless of whether the breach of Article 14 of the Convention is being alleged in addition to a breach of Article 9 or only by reference thereto;

Whereas, furthermore, with regard to the question whether there has been any discrimination in the members' right to education under Article 2 of the First Protocol, the Commission finds that a High Contracting Party, in deciding whether to recognise an institution as an educational establishment, is entitled to have regard to certain minimum educational standards, as shown by Article 5 of the UNESCO Convention on the Prevention of Discrimination in Education, 1960; whereas, therefore, any governmental measures which are taken to differentiate between institutions on such a basis do not constitute discrimination within the meaning of Article 14 of the Convention;

whereas it follows that in these respects the application is manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2), of the Convention;

Whereas the Commission finally considered the applicant corporation's allegations that the United Kingdom Government was responsible for a breach of Article 13 of the Convention in that it failed to provide to its members any effective remedy before a national authority for the alleged violations of the provisions of the Convention; whereas it has already been stated that this provision relates exclusively to a remedy in respect of a violation of one of the rights and freedoms set forth in the other Articles of the Convention; whereas, in the present case, not even the appearance of a violation of one of the other rights invoked by the applicant corporation on behalf of its members has been established; whereas, therefore, there is no basis for the application of Article 13 of the Convention; whereas it follows that this part of the application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2), thereof;

Now therefore the Commission

DECLARES THIS APPLICATION INADMISSIBLE

Secretary to the Commission

Acting President of the Commission

(A. B. McNULTY)

(F. ERMACORA)