APPLICATION/REQUÊTE N° 11559/85

H. v/the UNITED KINGDOM

H. c/ROYAUME-UNI

DECISION of 2 December 1985 on the admissibility of the application

DÉCISION du 2 décembre 1985 sur la recevabilité de la requête

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***Article 6, paragraph 1 of the Convention**: Vexatious litigant prevented from bringing civil proceedings without the leave of a judge. Here, the judge's refusal did not impair the essence of the applicant's right of access to court (reference to Golder and Ashingdane judgments).*

***Article 6, paragraphe 1, de la Convention**: Procédurier empêché d'intenter action au civil sans une autorisation spéciale du juge. En l'espèce, le refus opposé par le juge n'a pas atteint dans son essence le droit d'accès aux tribunaux (référence aux arrêts Golder et Ashingdane).*

THE FACTS *(français : voir p. 286)*

The applicant is a United Kingdom citizen, born in 1926, resident in Perth, Scotland and a geologist/teacher, psychologist — lecturer by profession. He is at present unemployed.

This is the applicant's second application to the Commission. His first, No. 10907/84, concerned his inability to bring proceedings against the education authorities by virtue of a vexatious litigant order made against him on 16 December 1982 under the Vexatious Actions (Scotland) Act 1898. It was declared inadmissible on 14 December 1984 by the Commission as the allegations made were in the nature of an *actio popularis*. The vexatious litigant order requires the leave of a judge in the Outer House of the Court of Session before proceedings may be commenced by the applicant.

As the result of an incident at Barrack Street Police Station in Perth on 27 January 1983 the applicant was convicted of a breach of the peace on 23 May 1983. An appeal by way of case stated was refused on 29 November 1983. The applicant claims that he sustained a bruise in the course of the incident and he applied to the Criminal Injuries Compensation Board for compensation. That request was refused on 26 September 1984 on the ground that, even if the assault alleged had taken place, the amount claimed was less than the minimum (£400) capable of being awarded by the Criminal Injuries Compensation Board.

The applicant then applied under the terms of the vexatious litigant order of 1982 for permission to institute civil proceedings against the police officer who, he alleged, had assaulted him. Consent was refused on 5 December 1984 because the judge of the Court of Session was not satisfied that the applicant had shown a *prima facie* ground for allowing the action to proceed.

It appears that there was no appeal available to the applicant against the refusal of leave to appeal to institute proceedings under the Vexatious Actions (Scotland) Act 1898.

COMPLAINTS

The applicant complains of breaches of Article 6 para. 1 of the Convention in that the hearing by the single judge of the Court of Session was in camera, and in the absence of the applicant. Further, he complains of a denial of access to court in respect of his civil claim against a police officer.

He also alleges violations of Articles 3, 5, 6, 8, 10, 12 and 13 of the Convention in respect of his treatment at Barrack Street Police Station and subsequent events before the Scottish courts.

THE LAW

1. The applicant complains that his inability to bring an action for a solatium against the police officer who allegedly assaulted him constitutes a violation of his right under Article 6 para. 1 of the Convention, which provides as follows:

> 1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly
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> .....

(a) The Commission notes that the applicant was refused leave to bring an action by virtue of an Order made against him on 16 December 1982 under the Vexatious Actions (Scotland) Act 1898. The applicant does not contest the imposition on him

of the Order and it is in any event not open to him to complain of it by virtue of the requirement of Article 26 of the Convention that an application be brought before the Commission within six months from the date on which the final decision was taken.

(b) The specific refusal of consent to the applicant's action to proceed, dated 5 December 1984, cannot be said to have determined his civil rights and obligations as it constituted a mere procedural step before the applicant was able to bring an action in the civil courts (cf. No. 6916/75, Dec. 8.10.76, D.R. 6 p. 107). It follows that the procedure by which such consent was to be obtained did not attract the procedural guarantees of Article 6 of the Convention, and this aspect of the application must be dismissed as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

(c) The refusal of leave by a single judge of the Court of Session to bring an action against a policeman did, however, restrict the applicant's access to court.

The Commission recalls that it has already discussed the question of restrictions on the bringing of actions by vexatious litigants, in its Report under Article 31 of the Convention in the Golder case (Golder v. United Kingdom, Comm. Report 1.6.73, para. 95, Eur Court. H.R., Series B no. 16, p. 52) where the Commission found, by way of *obiter dictum*, as follows:

> "95. ... Vexatious litigants in the United Kingdom are persons whom the courts treat specially because they have abused their right of access. But, having been declared a vexatious litigant, it is open to a person to prove to the court that he has a sustainable cause of action and he will then be allowed to proceed. The control of vexatious litigants is entirely in the hands of the courts. ... Such control must be considered as an acceptable form of judicial proceedings. "

The European Court of Human Rights, in its judgment in the Golder case (Eur. Court H.R., Golder judgment of 21 February 1975, Series A no. 18) did not make specific reference to the question of vexatious litigants, but did hold as follows:

> "36. ... Article 6 para. 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the 'right to a court', of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only. To this are added the guarantees laid down by Article 6 para. 1 as regards both the organisation and composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing."

The Court further decided (*ibid.* at para. 38) that such a right must, however, be subject to implied limitations:

> "38. The Court considers ... that the right of access to the courts is not absolute. As this is a right which the Convention sets forth (see Articles 13, 14, 17 and 25) without, in the narrower sense of the term, defining, there is room, apart from the bounds delimiting the very content of any right, for limitations permitted by implication.
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> The first sentence of Article 2 of the Protocol of 20 March 1952, which is limited to providing that 'no person shall be denied the right to education', raises a comparable problem. In its judgment of 23 July 1968 on the merits of the case relating to certain aspects of the laws on the use of languages in education in Belgium, the Court ruled that:
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> > 'The right to education ... by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention.' (Series A no. 6, p. 32 para. 5)
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> These considerations are all the more valid in regard to a right which, unlike the right to education, is not mentioned in express terms."

Implied limitations relating to persons of unsound mind and minors were expressly mentioned by the Court at paragraph 39.

The question of access to court has been further discussed by the Court in the Ashingdane judgment (Eur. Court H.R., Ashingdane judgment of 28 May 1985, Series A no. 93, para. 57) in which the Court held as follows:

> "Certainly, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access 'by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals' (see the above-mentioned Golder judgment, p. 19, para. 38, quoting the Belgian Linguistic judgment of 23 July 1968, Series A no. 6, p. 32, para. 5).
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> In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field (see, *mutatis mutandis*, the Klass and Others judgment of 6 September 1978, Series A no. 28, p. 23, para. 49).

Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see the above-mentioned Golder and Belgian Linguistic judgments, ibid., and also the ... Winterwerp judgment, Series A no. 33, pp. 24 and 29, paras. 60 and 75). Furthermore, a limitation will not be compatible with Article 6 para. 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

In the present case the Commission is only called upon to determine whether, following the Golder and Ashingdane judgments, the applicant's access to court was restricted to such an extent that the very essence of the right was impaired, whether the aim pursued was legitimate and whether the means employed to achieve that aim were proportionate to the aim itself.

The Commission is not called on to discuss the merits of the imposition of the vexatious litigant order on the applicant.

The vexatious litigant order of 16 December 1982 did not limit the applicant's access to court completely, but provided for a review by a senior judge of the Scottish judiciary of any case the applicant wished to bring. The Commission considers that such a review is not such as to deny the essence of the right of access to court; indeed, some form of regulation of access to court is necessary in the interests of the proper administration of justice and must therefore be regarded as a legitimate aim (cf. No. 727/60, Dec. 5.8.60, Yearbook 3 pp. 302, 309).

Further, the Commission finds that in the present case the means employed in regulating access to court by the applicant were not disproportionate to the aim of ensuring the proper administration of justice (cf. the reference to the Commission's Report in Golder case, *supra*) and it does not appear from the applicant's submissions that the judge's refusal of consent to commence proceedings was in any way arbitrary or unreasonable.

It follows that the applicant's complaint in this respect must be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The Commission has also examined the applicant's other complaints as they have been submitted by him. However, after considering them as a whole, the Commission finds that they do not generally disclose any appearance of a violation of the rights and freedoms set out in the Convention.

It follows that the remainder of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.