AS TO THE ADMISSIBILITY OF

Application No. 14137/88
by P.D.
against the United Kingdom

The European Commission of Human Rights sitting in private on 2 October 1989, the following members being present:

MM. C.A. NØRGAARD, President
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
M. F. MARTINEZ
Mr. L. LOUCAIDES

Mr. H.C. KRÜGER, 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 4 September 1987 by P.D. against the United Kingdom and registered on 23 August 1988 under file No. 14137/88;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1945 and resident in Hereford. She is represented before the Commission by Mrs. J. Macfarlane, Principal lecturer in law, Anglia Higher Education College.

A. The particular facts of the case

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

The applicant has a daughter, L., born in 1972, who has Downs syndrome. From the age of five she been educated solely in segregated schools against the applicant's wishes. She contends that her daughter should be educated in a Slow Learner Unit of a mainstream school, which units exist locally.

In September 1984 the local education authority (LEA), apparently following the report of their educational psychologist, issued its assessment of Louise's educational needs in a "statement of special educational needs", pursuant to sections 5 and 7 of the Education Act 1981. The assessment was as follows:

"L. is a Downs Syndrome child with severe learning difficulties, the most acute of which are her poor

use and comprehension of language...

L. requires a developmentally based curriculum and an educational environment in which high priority is given to the development of her general language skills. She should be encouraged to apply skills learned in one situation to other similar situations as much as possible. Concepts of time, money and road safety still need much improvement, as do her general self-help although she has made some progress in this area.

Small group provision continues to be necessary and regular opportunities for individual teaching are also required...

L. should be educated at a school where the curriculum and teaching expertise are suitable for the needs of a child with L.'s individual needs and with overall severe learning difficulties. Such a school is the Barrs Court School and L.'s current placement there should continue."

The applicant's appeals to a local appeal committee (section 8 (1) and (2) of the 1981 Act) and the Secretary of State for Education (section 8 (6) and (7) of the 1981 Act) failed. At the applicant's request a second assessment was made with the same result. Further appeals to the local appeal committee and the Secretary of State also failed. The latter held on 12 March 1987, after carefully considering all the evidence, that there were no grounds for amending L.'s educational assessment and he confirmed her placement at a special segregated school for disabled children.

Between May 1986 and May 1987 the applicant, concerned over damage to her daughter's social and intellectual development in a segregated environment, kept L. at home and taught her herself. The LEA refused to provide a teacher for home tuition. After the Secretary of State's decision of 12 March 1987 the applicant felt constrained to send L. to the special school pending an application to the Commission. When L. reached 16 years of age, beyond statutory school age, the LEA agreed to the applicant's request to place L. in a special class of a technical college as of April 1989 on a trial basis.

B. The relevant domestic law

Section 8 of the Education Act 1944 (the 1944 Act) creates a statutory duty on local authorities to provide suitable primary and secondary full-time education "to afford for all pupils opportunities for education offering such variety of instruction and training as may be desirable in view of their different ages, abilities, and aptitudes ...". In particular local authorities must provide appropriate special education for disabled children. This duty was reinforced by the Education Act 1981. The LEA's duties are enforceable, pursuant to a parent's complaint or otherwise under sections 68 and 99 of the 1944 Act, by the Secretary of State for Education. He may seek an order of mandamus against a recalcitrant LEA. A subsidiary obligation is placed upon parents to secure suitable education for their children in accordance with their age, aptitude and ability. This latter obligation is ultimately enforceable through criminal proceedings (sections 36, 37 and 39 of the 1944 Act). Section 76 of the 1944 Act requires education authorities to have regard to parents' wishes so far as is compatible with the provision of efficient instruction, and the avoidance of unreasonable public expenditure.

By virtue of the Education Act 1981 (the 1981 Act) LEAs are required to meet the special educational needs of handicapped children

in their area but, if possible, not to segregate them from other children, provided that parents' wishes have been taken into account and provided that this is compatible with the making of the special educational provision required, the provision of efficient education for the other children and the efficient use of resources (section 2 of the 1981 Act). Section 5 of the 1981 Act enables the LEA to assess the special educational needs of disabled children, in respect of which assessment the parents may make representations and submit written evidence. If the LEA decides that a child's special educational provision is called for, they must make a statement of the child's special educational needs and make suitable arrangements to meet them (section 7), even if it means placing the child in a school outside the LEA's jurisdiction (section 6 of the Education (Miscellaneous Provisions) Act 1953). Special educational assessments are subject to periodic review. Parents may appeal against the LEA's statement to an appeal committee which may confirm the special educational provision contained in the statement in the light of the circumstances of the case at the time of the hearing of the appeal, or remit the case to the LEA for reconsideration in the light of the committee's observations (section 8 (1), (2) and (4)). Appeal committees comprise three, five or seven members, drawn from the local education authority and people who have experience in education and are acquainted with educational conditions in the area (Schedule 2 Part I of the Education Act 1980).

Following the confirmation or remit of a case, the parents may finally appeal to the Secretary of State for Education who may confirm, amend or annul the LEA's statement (section 8 (6) and (7) of the 1981 Act). These appeals are normally dealt with by Ministry of Education civil servants, not the Minister himself. There is no right to an oral or adversary hearing with this form of appeal.

Judicial review of the Secretary of State's decisions, or any binding decision of an appeal committee, will lie on the "Wednesbury principles", i.e. if they are tainted by irrationality, illegality or procedural impropriety. An action for a declaration or damages for breach of statutory duty may also be available.

In general LEA's must respect parental choice of schools (section 6 of the Education Act 1980). Section 7 (1) of the 1980 Act provides for an appeal by parents against an LEA's decision concerning school admissions or a school's refusal to accept a pupil. This appeal is to the appeal committee, but section 7 (5) of the 1980 Act renders the appeal committee's decision fully binding on the LEA or school concerned.

COMPLAINTS

The applicant claims to be a victim of a violation of Article 2 of Protocol No. 1 to the Convention which, in her view, guarantees the provision of a reasonable range of practical choices within the State school system for parents in respect of their children's schooling. She submits that this has not been met in the present case. The applicant holds deep philosophical convictions about the type of schooling best suited to her daughter's needs and believes that segregated education is inappropriate and harmful in the long-term to her due to its overall fundamental direction. The assumptions about L.'s learning potential underlying segregated education are wholly rejected by the applicant. The applicant recognises that L. requires an education with a low teacher/pupil ratio, but this could have been provided by the specialist units within the integrated, mainstream schools, thus involving no unreasonable public expenditure and contributing to efficient instruction and training.

The applicant also claims that she is a victim of a breach of Article 14 of the Convention, read in conjunction with Article 2 of

Protocol No. 1, because as a parent of a child with learning difficulties she has fewer educational options to choose from than parents of normal children. L.'s education offers her less intellectual and social opportunity than that which a child without disabilities could expect within the United Kingdom State education system. The continuing segregation of disabled children has no objective or reasonable justification in the light of contemporary knowledge, as demonstrated in countries like Denmark and Italy, and is disproportionate. The rights and freedoms of able children in a mainstream school would not be infringed, instead they would benefit, their understanding and tolerance being enhanced.

The applicant contends that the refusal to provide L. with a place in a mainstream school during her compulsory schooling and the manner in which the LEA has handled L.'s case constitute an unjustified interference with the quality of her family life, contrary to Article 8 of the Convention.

Finally, the applicant complains of a breach of Article 6 para. 1 of the Convention on its own as regards allegedly unreasonable delay in the whole proceedings, and together with Article 14 as regards the absence of any decision making powers of the local appeal committee concerned under section 8 (1) and (2) of the Education Act 1981, compared with the decision making powers of this committee when dealing with other education appeals concerning school placement under section 7 of the Education Act 1980.

THE LAW

1. The applicant has complained that the British education authorities have failed to respect her right to have her disabled daughter, L., educated in accordance with her philosophical convictions, i.e. educated in a normal school. She contends that there is a lack of adequate choice of State schools for parents of disabled children and claims to be a victim of a violation of Article 2 of Protocol No. 1 (P1-2) to the Convention which reads as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Commission leaves open the question whether the applicant's disagreement with the education authorities about the appropriate school for L. could be said to be based on deep-founded philosophical convictions rather than a difference of view as to the best way of providing L. with an education. Even assuming that the applicant's philosophical convictions may be at issue in the present case, the Commission refers to the dominant character of the child's right to education in Article 2 of Protocol No. 1 (P1-2) to the Convention (cf. Eur. Court H.R., Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, p. 25, para. 52).

The second sentence of Article 2 (Art. 2) requires the State in exercising any educational function to ensure that the education and teaching of a child is as far as possible in conformity with the parents' religious and philosophical convictions. This requirement extends not only to the matter taught but to other aspects of the educational function (cf. Eur. Court H.R., Campbell and Cosans judgment of 25 February 1982, Series A no. 48, p. 14, para. 33). It does not, however, require the State to provide special facilities to accommodate particular convictions though it may affect the use of existing facilities (No. 7782/77, Dec. 2.5.78, D.R. 14 p. 179). In this context reference should be made to the United Kingdom Government's reservation to this provision, accepting the second

sentence of Article 2 (Art. 2) "only so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure".

The Commission notes that, in the same vein as the aforementioned reservation, section 2 of the Education Act 1981 provides that a child with special educational needs should be educated in an ordinary school if that is compatible with the special education the child requires, the provision of efficient education for other children at the school and the efficient use of resources.

The Commission observes that there is an increasing body of opinion which holds that, whenever possible, disabled children should be brought up with normal children of their own age. The Commission recognises, however, that this policy cannot apply to all handicapped children. It further recognises that there must be a wide measure of discretion left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of disabled children generally. While these authorities must place weight on parental convictions, it cannot be said that the second sentence of Article 2 (Art. 2) requires the placing of a child with severe learning difficulties in a general school (with the expense of additional teaching staff which would be needed) rather than in an available place in a special school.

In the present case the Commission notes that the expert opinion of the education authorities considered that L. had severe learning difficulties requiring a very small protective teaching group which could not be provided in a normal school. The Commission finds no evidence that this opinion was arbitrary or unreasonable. Nor does it find any evidence that the LEA concerned refused to consider the applicant's views or based their decision on reasons other than that of giving L. an as effective education as possible. The Commission concludes that the present case does not disclose any appearance of a violation of Article 2 of Protocol No. 1 (P1-2) to the Convention. It follows that this aspect of the application is manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also complained of discrimination, in breach of Article 14 (Art. 14) of the Convention read in conjunction with Article 2 of Protocol No. 1 (P1-2), insofar as there are allegedly fewer educational options for disabled children compared with able children within the State school system. However, the applicant has not substantiated this claim. The Commission notes that the relevant legislation encourages the integration of handicapped children in normal schools, but provides that their special needs be met, if necessary in specialised institutions. The Commission finds no element of discrimination in such a policy, but rather the contrary, the special requirements of certain disabled children being catered for where necessary. In these circumstances the Commission concludes that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant has next contended that the refusal to provide L. with a place in a mainstream school, full-time, was in breach of her rights under Article 8 (Art. 8) of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to respect for his ... family life ...
>
> 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 ... for the protection of ... the rights and freedoms of others."

However, the Commission notes that the educational authorities considered the applicant's views even if they were unable to fulfil them. It would not appear, therefore, that these authorities have failed to respect the applicant's right to respect for family life. Moreover, even assuming that the refusal to provide full-time normal education for L. could be said to have been an interference with the applicant's Article 8 (Art. 8) right, the Commission finds such interference justified, as being in accordance with the law and necessary in a democratic society for the protection of the rights of others, namely L.'s right to a suitable education for her disabilities. The Commission concludes that this complaint is also manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant has complained that the delays in L.'s educational assessment were unreasonable and in breach of the "reasonable time" requirement laid down in Article 6 para. 1 (Art. 6-1) of the Convention, the relevant part of which provides as follows:

> "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 ..."

However, the Commission finds that the assessment procedures are not a determination, within the meaning of this provision, of civil rights and obligations. Article 6 para. 1 (Art. 6-1) of the Convention is, therefore, not applicable to them and the applicant's complaint about delays must be rejected as being incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2).

5. Finally the applicant has complained of discrimination, in breach of Article 14 (Art. 14) of the Convention read in conjunction with Article 6 para. 1 (Art. 6-1) (civil rights), insofar as appeal committees acting under section 8 (1) and (2) of the Education Act 1981 have fewer decision making powers when dealing with parental appeals under section 8 (1) and (2) of the Education Act 1981, than they have when dealing with appeals under section 7 of the Education Act 1980. The former appeals concern special educational provision for disabled children, the latter appeals concern disputes over placements in normal schools.

However, the Commission considers that these committees are not determining, within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, parents' civil rights and obligations. The committees are made up of education experts who review the educational needs of the pupils concerned. Article 6 para. 1 (Art. 6-1) of the Convention is not, therefore, applicable to this review and no question of discrimination under Article 14 (Art. 14) of the Convention arises, as this latter provision is limited to the prohibition of discrimination in the securement of Convention rights. It follows that this aspect of the case must also be rejected as being incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)