COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

The applicant's identity may be disclosed.
L'identité du requérant peut être divulguée.

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

Application No. 11377/85
by Ms. Christine Y. EDWARDS
against the United Kingdom

The European Commission of Human Rights sitting in private on 5 July 1985, the following members being present:

MM. C. A. NØRGAARD, President
G. SPERDUTI
J. A. FROWEIN
G. JØRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
J. A. CARRILLO
A. S. GÖZÜBÜYÜK
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs G. H. THUNE
Sir Basil HALL

Mr. H. C. KRÜGER, Secretary to the Commission

Having regard to Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 25 June 1984 by Ms. Christine Y. EDWARDS against the United Kingdom and registered on 4 February 1985 under file No. 11377/85;

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

Having deliberated;

Decides as follows:

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THE FACTS

The facts as they have been submittted on behalf of the applicant, a British citizen born in 1946 and living in London, by her representative Mr. Peter D. Quick, a solicitor of Heywood, near Manchester, and County Legal Officer to the Greater Manchester Council, may be summarised as follows:

The London Government Act 1963 established a two-tier system of local government for the Greater London area which came into force on 1 April 1965. Local administration was thereafter to be exercised by the Greater London Council (the "GLC") and by borough councils. The London borough councils were responsible for providing the more localised services while the GLC would administer those services the nature of which required a unified policy over the whole of the Greater London area. These services include the provision of fire services and fire prevention, the disposal of waste and refuse, strategic planning, and certain aspects of housing and major highways. The GLC also exercises functions in the fields of industry and employment, recreation and the arts, civil defence and flood prevention as well as a wide variety of other matters. The GLC is also responsible, through a special committee known as the Inner London Education Authority, for the provision of education in central London.

Under this system an individual has the right to vote in the periodic elections for the GLC and also for his local London borough council. Elections to the GLC have been held in 1967, 1970, 1973, 1977 and 1981 - on each occasion for a four year term of office. Together with the individual's right to take part in electing councillors to the GLC for his area, he has a corresponding right to require his local councillor to represent his interests on the Greater London Council on any matter which may be of concern to him and for the proper administration of which the GLC is directly responsible to the local electorate. The applicant is a resident of the Greater London area and is consequently entitled to participate in any elections to the GLC.

On 1 February 1985, by means of an order of the Secretary of State, certain provisions contained in the Local Government (Interim Provisions) Act 1984 ("the 1984 Act") came into force. The effect of these provisions is to revoke the individual's right to vote in elections to the GLC. The 1984 Act achieves this by (a) putting an end to elected membership to the GLC, (b) cancelling all future elections, including those due to take place in 1985, and (c) extending the terms of office of the existing GLC councillors to 1 April 1986. After that date, the present councillors will simply cease to hold office and the 1984 Act makes no provision for the future of the GLC or for the administration of its functions. It therefore appears from the form of the 1984 Act as drafted that the right of an individual resident in the Greater London area to participate in elections to the GLC is abolished. The 1985 elections will not take place, and draft legislation is currently pending before the United Kingdom Parliament to abolish the GLC.

The applicant argues that the GLC forms part of the legislature of the United Kingdom, since it enjoys the power to legislate in ways which affect the individuals living in its area. The GLC may make bye-laws for various purposes which in effect amount to local legislation. It may make various orders affecting the individual's liberty, including a very comprehensive control over the roads and the traffic flow system in Greater London, it has extensive powers compulsorily to purchase private land for its many functions, and it may even promote local legislation in Parliament which specifically affects the people of the Greater London area.

COMPLAINTS

The applicant contends that the GLC constitutes part of the "legislature" of the United Kingdom, and that the removal of free elections to that council is a violation of the guarantees contained in Art. 3 of Protocol No. 1.

THE LAW

The applicant is resident in the Greater London area and complains that the cancellation of the elections to the Greater London Council ("the GLC"), in which she was entitled to participate, fails to respect her rights as guaranteed by Art. 3 of Protocol No. 1, which states:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The Commission notes that section 2 (1) of the Local Government (Interim Provisions) Act 1984 ("the 1984 Act") provides that "No ordinary elections of councillors of the Greater London Council ... shall be held after the coming into force of this Act", and that the term of office of any councillor due to expire on 7 May 1985 (the end of the period for which they had been elected pursuant to the previous elections) would be extended to 1 April 1986. These provisions came into force on 1 February 1985 pursuant to the Local Government (Interim Provisions) Act 1984 (Appointed Day) Order 1985. It is therefore apparent that the elections of councillors to the GLC have been cancelled by the 1984 Act.

The Commission recalls its constant case-law in which it has established that, although the wording of Art. 3 of Protocol No. 1 provides expressly only for an institutional guarantee of free elections, it implies a recognition of the principle of universal suffrage and, in this context the right to vote and the right to stand for election to the legislature. However, this right is neither absolute nor without limitations, but subject to such restrictions imposed by the Contracting States as are not arbitrary and do not

interfere with the free expression of the people's opinion (see Dec. No. 6573/74 v. the Netherlands, 19.12.74, D.R. 1 p. 87; and Dec. Nos. 6745/76 and 6746/76 v. Belgium, 30.5.75, D.R. 2 p. 110, at p. 116).

Art. 3 of Protocol No. 1 protects the right of the people by means of free elections to choose the "legislature". The Commission must therefore consider whether the GLC can be considered as constituting part of the legislature of the United Kingdom. In this respect the Commission recalls its decision in Dec. No. 5155/71, X. v. the United Kingdom, 12.7.76, D.R. 6 p. 13, which concerned the suspension of local government elections in Northern Ireland. The Commission held that:

> " ... in considering the status of local authorities in Northern Ireland the Commission takes note of the statement of the respondent Government that insofar as these local authorities have a legislative function it is confined to the making of bye-laws applicable within their areas and these powers are rigidly limited by Statute and they have no powers to make rules other than in accordance with the powers conferred by Parliament."

The Commission concluded that the local authority in question was not therefore part of the legislature.

The constitutional arrangements of the United Kingdom do not authorise the exercise of legislative powers by subordinate bodies. As a matter of British constitutional law, Parliament, as the elected representative of the British people, may therefore vote to abolish the GLC if this course of action recommends itself. The absolute constitutional authority which the British Parliament is able to exercise is indicative of the subordinate and subsidiary nature of the GLC.

In addition, the Commission must review the specific powers enjoyed by the GLC, the main sources of which are the London Government Act 1963 and the Local Government Act 1972. The GLC is a body corporate created by statute and as such may only do such things as are expressly or impliedly authorised by statute or by subordinate legislation. It is, however, specifically authorised to do anything which is calculated to facilitate the discharge of any of its statutory functions.

It is clear that the GLC is a repository of extensive powers of a predominantly administrative nature concerning the organisation and provision of local services. Most of these powers are granted by statute or other subordinate legislation which defines closely and restrictively their field of application. Other powers require the approval and consent of a superior executive authority before they may be exercised. Still others may be exercised by the GLC but such exercise will not become effective until approved by a confirming authority.

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Having regard to the powers exercised by the GLC, its relationship to the United Kingdom Parliament, the Commission's previous case-law, and the facts of the case, the Commsision is of the opinion that, despite the significant scope of its functions, the GLC cannot properly be said to form part of the "legislature" of the United Kingdom. It does not possess an inherent primary rulemaking power and those powers which have been delegated to it by the Parliament of the United Kingdom are exercised subject to that Parliament's ultimate control.

The GLC not forming part of the legislature of the United Kingdom, the cancellation of elections to it cannot raise an issue under Art. 3 of Protocol No. 1.

It follows that this application is incompatible ratione materiae with the provisions of the Convention within the meaning of Art. 27 (2).

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H. C. KRUGER) — (C. A. NØRGAARD)