AS TO THE ADMISSIBILITY

Application No. 11790/85
by Claude HARRISON
against the United Kingdom

The European Commission of Human Rights sitting in private on 9 November 1987, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. J. RAYMOND, Deputy 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 17 September 1985 by Claude HARRISON against the United Kingdom and registered on 10 October 1985 under file No. 11790/85;

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 1923 and is resident in Bridlington, Yorkshire. The facts as submitted by the applicant may be summarised as follows:

After taking advice from a local Member of Parliament (M.P.), the applicant applied for and received a small business grant from the district council in connection with a photographic studio which he set up on the ground floor of his house. In or about June 1984, he asked a local newspaper to give him publicity. After a visit by a journalist to the studio, articles appeared in several local and national newspapers insinuating that the council grant, obtained through the good offices of an M.P., had been used to finance a pornographic business. As a result, the applicant's reputation as a photographer plummeted and families were discouraged from using his studios for pictures of their children.

The applicant sought advice as to what remedies he could seek, but was informed by the Law Society in a letter of 14 November 1984

that there would be no point in applying for legal aid in order to sue the journalist or newspapers for defamation because such proceedings are excluded from the English civil legal aid scheme.

COMPLAINTS

The applicant complains that he is unable to take his defamation complaint to the courts to obtain justice and to prove the innocence of the press allegation, since the civil legal aid scheme does not extend to defamation proceedings.

THE LAW

The applicant has complained of a denial of access to court in respect of defamation proceedings which he wished to pursue against a local newspaper, because legal aid is not available in England for such litigation.

The right of access to court in the determination of a civil right, such as the right to enjoy a good reputation, is an inherent guarantee of Article 6 para. 1 (Art. 6-1) of the Convention which provides for "a fair and public hearing ... by an independent and impartial tribunal" (cf. Eur. Court H.R., Golder judgment of 21 February 1975, Series A no. 18, paras. 26 and 36).

The Commission does not consider it necessary to decide whether the applicant has exhausted domestic remedies and introduced his application within the time-limit provided for in Article 26 (Art. 26) of the Convention, for it finds the application anyway manifestly ill-founded for the following reasons:

Article 6 para. 1 (Art. 6-1) does not guarantee a right to free legal aid in civil cases. Moreover, the Commission has held that "even where legal aid may be available for certain types of civil action ... given the limited financial resources of most civil legal aid schemes, it is not unreasonable to exclude certain categories of legal proceedings from this form of assistance. The fact that the English legal aid scheme excludes assistance in defamation proceedings has not been shown to be arbitrary" in certain cases (No. 10871/84, Dec. 10.7.86 and No. 10594/83, Munro v. the United Kingdom, Dec. 14.7.87, both to be published in Decisions and Reports). The Commission recognised in the said Munro case that "the nature of a claim of defamation is such that it may easily be open to abuse. As a result there is an objective risk that proceedings for defamation may be unreasonably or abusively pursued. This is reflected in the common practice of Member States of the Council of Europe to adopt special procedures to guard against such abuses."

The question remains, however, whether apart from the legal aid question, the present applicant has been denied effective access to court. The Commission finds no evidence in the case file to substantiate that this was so: The applicant appears to have made no attempt to institute civil proceedings in person or, indeed, to obtain preliminary legal advice as to the prospects of success of his claim. In these circumstances, the Commission concludes that the non-availability of legal aid for defamation proceedings in the present case has not been shown to have deprived the applicant of access to court, contrary to Article 6 para. 1 (Art. 6-1) of the Convention.

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

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(J. RAYMOND) — (C.A. NØRGAARD)