CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42639/04
by Victor JONES
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 13 September 2005 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 27 July 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Victor Jones, is a British national who was born in 1946 and lives in Halkyn, Flintshire.

A. The circumstances of the case

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

On 12 June 2002 the applicant applied to Halkyn Community Council for permission to place a memorial stone incorporating a photograph on the grave of his daughter. The Council owned and managed the cemetery where she had been buried in August 2000. It was the burial authority for Halkyn Cemetery within the meaning of the Local Authorities' Cemeteries Order 1977(SI 1977/204).

On 25 June 2002, the Council refused permission. It stated that while the County Council permitted photographs in its cemeteries each burial authority made its own regulations.

On 23 July 2002, the Council amended its rules to contain a specific prohibition against photographs.

The applicant states that despite frequent requests the Council failed to provide him with a copy of the burial regulations.

On 15 June 2003, the applicant brought proceedings in the High Court, alleging *inter alia* that the Council had not promulgated its burial regulations at the relevant time and that they had acted in abuse of power and violated his rights under Articles 8 and 9 of the Convention. He relied in particular on the assertion that cemeteries under the control of the County Council permitted the display of photographs on headstones.

The applicant's application for legal aid was refused. His appeal against the refusal was rejected on 10 December 2003.

On 23 April 2004, after a hearing, the District Judge, sitting in the High Court Registry, struck out the claim under the Civil Procedure Rule 3.4(2)(a), on the grounds that he had no reasonable grounds for bringing the claim. No copy of the decision has been provided.

The applicant applied for permission to appeal.

On 20 May 2004, the judge refused permission. He found that in the exercise of its management powers under Article 3 of the 1977 Order the Council had issued and promulgated regulations for the proper regulation, management and control of Halkyn Cemetery and that these required grave owners to make application to the office of the Clerk to the Council, accompanied by a drawing of the proposed memorial and a copy of its inscription. He noted that no memorial would be admitted into the cemetery without the prior approval of the clerk. While regulations provided *inter alia* for the size of any memorial stone and forbade any constructed with

material unsuitable or incongruous, there was no mention of any prohibition against the display of photographs upon any memorial prior to the amendment passed on 23 July 2002. He found however that, as the rules in force for the cemetery at the relevant time required prior approval of the Council for any form of memorial, no amendment of the rules had been necessary to give them the power to refuse the proposed memorial with a photograph. Insofar as the applicant complained that the Council should have consulted the electors before passing the amendment, the judge noted that the proper remedy lay in an application to the Administrative Court. As regarded the applicant's arguments under the Convention, he did not consider that the decision engaged Article 8 of the Convention. However, even assuming that it did, it was in accordance with the applicable regulations and the discretion invested in burial authorities to regulate cemeteries was manifestly in accordance with Article 8, as any interference with the freedom of choice of the individual was justified to prevent disorder and protect the rights and freedoms of others. Nor, in his view, was Article 9 engaged as the Council did not impose any restriction on religious observance, worship or belief.

After a hearing on 1 July 2004, the High Court judge refused the renewed application for permission to appeal.

COMPLAINTS

The applicant complains under Article 6 of the Convention about the refusal of legal aid and that this led to inequality of arms *vis-à-vis* the other party which was represented.

He complains under Article 8 that the refusal of permission for a memorial with a photograph was not lawful as the Council had not properly issued its rules at the relevant time and that there was no justification in the public interest for the ban on photographs.

He complains under Article 9 that, as the Church of Wales accepted photographs on graves, his religious beliefs had been interfered with by the ban.

He complains under Article 10 that the Council failed to distribute information about its burial rules to the community.

He complains, finally, under Article 14, that he is discriminated against as photographs are allowed in many other cemeteries, including those of the Church of Wales and the Catholic Church.

THE LAW

1. The applicant complained under Article 6 that he was not given legal aid and that there was inequality of arms as concerned his represented opponent.

Article 6 of the Convention provides as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

The Court recalls its constant case-law to the effect that "Article 6 § 1 extends only to '*contestations'* (disputes) over (civil) 'rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law; it does not itself guarantee any particular content for (civil) 'rights and obligations' in the substantive law of the Contracting States" (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 46-47, § 81; *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, p. 70, § 192; and *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 87, ECHR 2001-V).

There is no indication in the present case that the applicant could claim any right under domestic law concerning the type of headstone or memorial to be placed on a grave owned and managed by a burial authority. The Court notes that his claim was struck out by the courts for lack of reasonable grounds.

It follows that this complaint is outwith the scope of Article 6 § 1 of the Convention and must be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complained that the refusal of permission to place a photograph on his daughter's memorial was contrary to Article 8 of the Convention, which provides as relevant:

> "1. Everyone has the right to respect for his private and 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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court would observe that the exercise of Article 8 rights of family and private life pertain, predominantly, to relationships between living human beings. While it is not excluded that respect for family and private life extends to certain situations after death, for example, the ability to attend a close relative's funeral (*Ploski v. Poland*, no. 26761/95, judgment

of 12 November 2002, § 32) or delay by the authorities in releasing a child's body to the parents for a funeral (*Pannullo and Forte v. France*, no. 37794/97, ECHR 2001-X), there is no right as such to obtain any particular mode of funeral or attendant burial features.

In the present case, the Court recalls that the applicant's daughter was buried in a cemetery owned and managed by a burial authority. The regulations applicable to the cemetery required prior approval of all headstones and memorials.

Notwithstanding the applicant's personal preference for the addition of a photograph to the headstone and the fact that other burial authorities apparently gave permission for such features, the Court does not find that the refusal of permission in this case can be regarded as impinging on the applicant's personal or relational sphere in such a manner or to such a degree as to disclose an interference with his right to respect for his family or private life.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant complained under Article 9 of the Convention that the bar on photographs interfered with his religion.

Article 9 provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The term "practice" as employed in Article 9 § 1 does not cover every act motivated by, or connected with, religious beliefs (see *Kalaç v. Turkey*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1209, § 27; *Arrowsmith v. the United Kingdom*, no. 7050/75, Commission decision of 12 October 1978, Decisions and Reports (DR) 19, p. 5; and *C. v. the United Kingdom*, no. 10358/83, Commission decision of 15 December 1983, DR 37, p. 142).

In the present case, the decision refusing permission for a photograph on the memorial cannot be regarded as preventing any manifestation of the applicant's religious beliefs in the sense protected by this provision. It is irrelevant for this purpose that the church of which the applicant is a member permitted such photographs, for it cannot be argued that the applicant's beliefs required a photograph on the memorial or that he could

not properly pursue his religion and worship without permission for such a photograph being given.

It follows that this complaint must be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

4. The applicant complained under Article 10 of the Convention, which provides for freedom of expression and the freedom to impart and receive information, that the Council failed to provide information about its burial rules.

This complaint is misconceived. The freedom to receive information, referred to in paragraph 2 of Article 10, "basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him" (see *Leander v. Sweden*, judgment of 26 March 1987, Series A no. 116, p. 29, § 74). It does not impose an obligation on any authority to provide any particular information.

It follows that this complaint must be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

5. Finally, the applicant complained that he was discriminated against since many other cemeteries did allow photographs, invoking Article 14 of the Convention which provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court recalls that Article 14 has no independent existence and only complements the other substantive provisions of the Convention and its Protocols. Although the application of Article 14 does not presuppose a breach of those provisions, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, for example, *Karlheinz Schmidt v. Germany*, judgment of 18 July 1994, Series A no. 291-B, § 22).

The Court further recalls that Article 14 is not concerned with all differences in treatment but only with differences having as their basis or reason a personal characteristic ("status") by which persons or a group of persons are distinguishable from each other (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, § 56).

The Court has found above that the restriction on photographs on memorials in the particular cemetery did not constitute any interference with the applicant's rights under the Convention. Even assuming the applicant's substantive claims may be regarded as falling within the ambit of any of the

Articles invoked, the Court finds no appearance of discrimination contrary to Article 14: the different authorities were entitled to adopt different policies in relation to the cemeteries within their jurisdiction and the facts disclose no difference of treatment of the applicant within the meaning of Article 14.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President