AS TO THE ADMISSIBILITY OF

Application No. 14136/88
by J. and B. L.
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 25 February 1988 by J. and B. L. against the United Kingdom and registered on 23 August 1988 under file No. 14136/88;

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 applicants are British citizens, husband and wife, born in 1948 and 1953 respectively and resident in Rugby. They are represented before the Commission by Mrs. J. Macfarlane, Principal lecturer in law, Anglia Higher Education College.

A. The particular facts of the case

The fact of the present case, as submitted by the applicants, may be summarised as follows:

The applicants have a son, St., born in 1979, who suffers from ataxia and dsypraxia, resulting in delayed development, particularly in expressive development. There is no medical reason why he could not mix with able children. The applicants recognise that St. has special needs but consider they are best met in an integrated normal school environment with adequate help, where he could reap the benefit of stimulation from able children, especially in language development. This has been born out during his participation in a mixed ability child playgroup (attested by playgroup organisers and nursery school teachers). On 7 March 1985 the local education authority (LEA) issued its assessment of S.'s educational needs in a "statement of special educational needs", pursuant to sections 5 and 7 of the Education Act 1981. They found, on the basis of the report of their educational psychologist, that

"St. has severe delayed development in all areas and is functioning at a very limited level of general ability". They considered that he needed "a very small protective teaching environment where all learning is carefully structured", with particular attention being given to activities designed "to encourage St. to look at the material he is handling". They proposed to place him in the nearest appropriate special day school. The applicants unsuccessfully appealed against the assessment pursuant to section 8 (1) and (2) of the 1981 Act. A further appeal to the Secretary of State for Education under section 8 (6) and (7) of the 1981 Act, which was lodged on 8 September 1986, was rejected a year later on 23 September 1987. In reaching his decision the Secretary of State took into account the advice, representations and evidence which had been before the LEA and the local appeal committee, as well as independent reports submitted by the applicants and their further representations. However, he agreed with the LEA's assessment of St.'s special educational needs and their proposal to place him at the special school.

Since then the applicants have sought to negotiate with the LEA to secure an alternative form of education for St. other than in a segragated school where, they claim, the pupils' handicaps become exaggerated and the children are over-protected and unprepared for life in the outside world. The LEA offered to place St. in a normal mainstream school for two days of the week, with three days at the special school. The applicants accepted this solution temporarily, but consider it indadequate for St.'s needs and the rights of all three of them to have St. educated in an environment which allows him maximum potential for social and intellectual development. At the moment the family are in dispute with the LEA about the appropriate resources at the mainstream school for St.'s education.

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 applicants claim to be victims of a violation of Article 2 of Protocol No. 1 to the Convention which, in their 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. They submit that this has not been met in their present case. The applicants hold deep philosophical convictions about the type of schooling best suited to their son's needs and believe that segregated education is inappropriate and harmful in the long-term to him due to its overall fundamental direction. The assumptions about St.'s learning potential underlying segregated education are wholly rejected by the applicants. The applicants recognise that S. requires an education with a low teacher/pupil ratio, but this can be provided by the specialist units within the integrated, mainstream schools, thus involving no unreasonable public expenditure and contributing to efficient instruction and training.

The applicants also claim that they are victims of a breach of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1, because as parents of a child with learning difficulties they have fewer educational options to choose from than parents of normal children. St.'s education offers him 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 handicapped 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 applicants contend that the refusal to provide St. with a place in a mainstream school and the manner in which the LEA has handled S.'s case constitute an unjustified interference with the quality of their family life, contrary to Article 8 of the Convention.

Finally, the applicants complain of a breach of Article 6 para. 1 of the Convention on its own as regards an allegedly unreasonable delay of one year in the final appeal 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 applicants have complained that the British education authorities have failed to respect their right to have their disabled son, St., educated in accordance with their philosophical convictions, i.e. educated in a normal school. They contend that there is a lack of adequate choice of State schools for parents of disabled children and claim to be victims 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 applicants' disagreement with the education authorities about the appropriate school for St. could be said to be based on deep-founded philosophical convictions rather than a difference of view as to the best way of providing St. with an education. Even assuming that the applicants' 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 development delay 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 St. had a severe development delay requiring a very small protective teaching group which could not be provided in a normal school. A compromise has, however, been achieved whereby St. attends a normal school two days a week, with three days at a special school in the applicants' home town. In these circumstances the Commission finds that the education authorities have respected the applicants' views, as well as St.'s right to have 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 applicants have 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 applicants have 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 applicants have next contended that the refusal to provide S. with a place in a mainstream school, full-time, is in breach of their 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 have taken account of the applicants' views and proposed that St. be placed part-time in a normal school, two days a week. It would not appear, therefore, that these authorities have failed to respect the applicants' right to respect for family life. Moreover, even assuming that the refusal to provide full-time normal education for St. could be said to be an interference with the applicants' 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 St.'s right to a suitable education for his 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 applicants have complained that the one year delay taken by the Secretary of State for Education to review St.'s educational assessment under section 8 (6) and (7) of the Education Act 1981 was 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 review procedure before the Secretary of State is 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 this review and the applicants' complaint about a delayed review 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 applicants have 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, as with the Secretary of State's review, the aforementioned committees are not determining, within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, parents' civil rights and obligations. These 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)