FIRST CHAMBER

AS TO THE ADMISSIBILITY OF

Application No. 20271/92
by Vanessa REDGRAVE
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 1 September 1993, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
G.B. REFFI

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 14 April 1992 by Vanessa REDGRAVE against the United Kingdom and registered on 2 July 1992 under file No. 20271/92;

Having regard to :

- the observations submitted by the respondent Government on 28 January 1993 and the observations in reply submitted by the applicant on 30 April 1993;

- the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1937 and resident in London. She is represented before the Commission by Simons Muirhead & Burton, solicitors practising in London. The facts as submitted by the parties may be summarised as follows.

The applicant is a well-known actress who has been associated in the past with domestic and international political causes. She was previously member of the Workers' Revolutionary Party and is now member of the Marxist Party which formed out of a split in 1985 of the Workers' Revolutionary Party.

In February 1991, the applicant discovered an electronic listening device in a house which she owned and used for meetings with political colleagues.

The applicant believes that the device was installed on or on the behalf of the British Security Service and used to conduct secret

surveillance and /or to eavesdrop upon her private conversations. This belief is based, inter alia, on documents released to the applicant under the Freedom of Information Act in the USA, which reveal that her political activities in the United Kingdom have been under close and sustained surveillance for a number of years.

After the discovery of the device, a claim was made to the applicant's legal representatives by H., a member of the Workers' Revolutionary Party to which the applicant had previously belonged, that he had designed and made the device. If this is true, which the applicant is not in a position to verify, the applicant believes that H. may have been involved as an agent, willing or otherwise of the Security Service. Entries in the documents obtained from the US authorities contain information which could only have been obtained by a person present or able to overhear particular political meetings and suggests that the surveillance of the applicant involved the use of purported sympathisers to infiltrate the groups to which the applicant belongs.

On 30 July 1991, the applicant submitted a complaint to the Security Service Tribunal, a body established under the Security Service Act 1991, alleging that the Security Service may have been responsible for the installation and monitoring of the listening device.

By letter dated 22 October 1991 the Tribunal informed the applicant that no determination in her favour had been made.

Relevant domestic law and practice

The Security Service

The Security Service Act 1989 places the Security Service on a statutory basis.

It provides inter alia:

"1. (1) There shall continue to be a Security Service (in this Act referred to as "the Service") under the authority of the Secretary of State.

(2) The function of the Service shall be the protection of national security and, in particular, its protection against threats from expionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.

(3) It shall also be the function of the Service to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions of persons outside the British Islands.

2. (1) The operations of the Service shall continue to be under the control of a Director-General appointed by the Secretary of State.

(2) The Director-General shall be responsible for the efficiency of the Service and it shall be his duty to ensure

(a) that there are arrangements for securing that no information is obtained by the Service except so far as necessary for the proper discharge of its functions or disclosed by it except so far as necessary for that purpose or for the purpose of preventing or detecting serious crime; and

(b) that the Service does not take any action to further the interests of any political party.

(3) The arrangements mentioned in subsection (2)(a) above shall be such as to ensure that information in the possession of the Service is not disclosed for use in determining whether a person should be employed, or continue to be employed, by any person, or in any office or capacity, except in accordance with provisions in that behalf approved by the Secretary of State.

(4) The Director-General shall make an annual report on the work of the Service to the prime minister and the Secretary of State and may at any time report to either of them on any matter relating to its work.

3. (1) No entry on or interference with property shall be unlawful if it is authorised by a warrant issued by the Secretary of State under this section.

(2) The Secretary of State may on an application made by the Service issue a warrant under this section authorising the taking of such action as is specified in the warrant in respect of any property so specified if the Secretary of State

(a) thinks it necessary for the action to be taken in order to obtain information which

(i) is likely to be of substantial value in assisting the Service to discharge any of its functions; and

(ii) cannot reasonably be obtained by other means; and

(b) is satisfied that satisfactory arrangements are in force under section 2(2)(a) above with respect to the disclosure of information obtained by virtue of this section and that the information obtained under the warrant will be subject to those arrangements."

The Security Service Tribunal

The Act also provides for a tribunal, known as the Security Service Tribunal, to deal with complaints:

"5. (1) There shall be a Tribunal for the purpose of investigating complaints about the Service in the manner specified in Schedule 1 to this Act...

(4) The decisions of the Tribunal and the Commissioner under that Schedule (including decisions as to their jurisdictions) shall not be subject to appeal or liable to be questioned in any court."

Schedule 1 to the Act provides, inter alia :

"1. Any person may complain to the Tribunal if he is aggrieved by anything which he believes the Service has done in relation to him or to any property of his; and, unless the Tribunal consider that the complaint is frivolous or vexatious, they shall investigate it in accordance with this Schedule.

2. (1) The Tribunal shall investigate whether the complainant has been the subject of inquiries by the Service.

(2) If the Tribunal find that the Service has made inquiries about the complainant but that those inquiries had ceased at the

time when the complaint was made, they shall determine whether, at the time when the inquiries were instituted, the Service had reasonable grounds for deciding to institute inquiries about the complainant in the discharge of its functions.

(3) If the Tribunal find that inquiries by the Service about the complainant were continuing at the time when the complaint was made, they shall determine whether, at that time, the Service had reasonable grounds for deciding to continue inquiries about the complainant in the discharge of its functions...

5. (1) Where the Tribunal determine under paragraph 2 or 3 above that the Service did not have reasonable grounds for the decision or belief in question, they shall

(a) give notice to the complainant that they have made a determination in his favour under that paragraph; and

(b) make a report of their findings to the Secretary of State and to the Commissioner.

(2) The Tribunal shall also give notice to the complainant of any determination in his favour by the Commissioner under paragraph 4 above.

(3) Where in the case of any complaint no such determination as is mentioned in sub-paragraph (1) or (2) above is made by the Tribunal or the Commissioner the Tribunal shall give notice to the complainant that no determination in his favour has been made on his complaint.

6. (1) Where the Tribunal give a complainant notice of such a determination as is mentioned in paragraph 5(1) above the Tribunal may

(a) if the determination is under paragraph 2 above, order inquiries by the Service about the complainant to be ended and any records relating to such inquiries to be destroyed;

(b) if the determination is under that paragraph or paragraph 3 above, direct the Secretary of State to pay to the complainant such sum by way of compensation as may be specified by the Tribunal.

(2) Where the Tribunal give a complainant notice of such a determination as is mentioned in paragraph 5(2) above the Tribunal may

(a) quash any warrant in respect of any property of the complainant which the Commissioner has found to have been improperly issued or renewed and which he considers should be quashed;

(b) if the Commissioner considers that a sum should be paid to the complainant by way of compensation, direct the Secretary of State to pay to the complainant such sum as the Commissioner may specify."

Pursuant to Schedule 2, the Tribunal consists of 3-5 members each of whom must be a barrister, solicitor or advocate of not less than ten years' standing. Members are appointed for a period of five years by Her Majesty by royal warrant and may be removed from office by Her Majesty on an address presented to her by both Houses of Parliament.

Pursuant to Section 4 of the Act, the Prime Minister appoints as a Commissioner a person who holds or has held high judicial office. He has the role, inter alia, of keeping under review the exercise by the Secretary of State of his powers under Section 3 to issue warrants. He makes an annual report to the Prime Minister on the discharge of his functions and the report is then laid before Parliament.

Pursuant to paragraph 7 of Schedule 1, matters may be referred to the Commissioner by the Tribunal:

> "7. (1) If in a case investigated by the Tribunal under paragraph 2 above they consider that the Service may not be justified in regarding all members of a particular category as requiring investigation they shall refer that matter to the Commissioner.
>
> (2) If in any case investigated by the Tribunal -
>
> > (a) the Tribunal's conclusions on the matters which they are required to investigate are such that no determination is made by them in favour of the complainant; but
> >
> > (b) it appears to the Tribunal from the allegations made by the complainant that it is appropriate for there to be an investigation into whether the Service has in any other respect acted unreasonably in relation to the complainant or his property, they shall refer that matter to the Commissioner.
>
> (3) The Commissioner may report any matter referred to him under this paragraph to the Secretary of State who may take such action in the light of the report as he thinks fit, including any action which the Tribunal have power to take or direct under paragraph 6 above."

COMPLAINTS

The applicant believes that the United Kingdom Government has acted in violation of Article 8 of the Convention by installing and monitoring the electronic listening device in her house. She alleges that it is reasonable to infer that the British Security Service keeps her under surveillance and that such surveillance may involve the use of electronic listening devices. She further submits that the Security Service Tribunal procedure is unsatisfactory since it does not permit disclosure of any information.

The applicant also submits that there is no effective remedy for her complaints contrary to Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 14 April 1992 and registered on 2 July 1992.

On 10 September 1992, the Commission decided to communicate the application to the Government and to ask for written observations on the admissibility and merits of the application.

The Government's observations were submitted on 28 January 1993 after one extension in the time-limit and the applicant's observations in reply were submitted on 30 April 1993 after one extension in the time-limit.

THE LAW

Article 8 (Art. 8) of the Convention

The applicant complains that a listening device has been installed in her property and monitored by the Security Service as part of their surveillance of her activities. She invokes Articles 8 (Art. 8) of the Convention which provides insofar as relevant:

> "1. Everyone has the right to respect for his private ... 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 Commission notes that the applicant has no concrete proof to support her allegation that the Security Service has conducted surveillance with a view to compiling a file of personal information about her. The Commission recalls however that "an individual under certain conditions, claim to be a victim of a violation occasioned by the mere existence of secret measures ... without having to allege that such measures were in fact applied to him" (Eur. Court H.R., Klass judgment of 6 September 1978, Series A no. 28, p. 18 para. 34).

Similarly, in the Malone case, the Court agreed with the Commission that the existence of laws and practices permitting and establishing a system for effecting secret surveillance amounted in itself to an interference with the applicant's rights under Article 8 (Art. 8) of the Convention, apart from any measures actually taken against him (Eur. Court H.R., Malone judgment of 2 August 1984, Series A no. 82, p. 31 para. 64).

The Commission has held that this case-law cannot be interpreted so broadly as to encompass every person in the United Kingdom who fears that the Security Service may have conducted surveillance of her for the purpose of compiling information. An applicant however cannot be reasonably expected to prove that information concerning her private life has been compiled and retained. It is sufficient, in the area of secret measures, that the existence of practices permitting secret surveillance be established and that there is a reasonable likelihood that the Security Service has compiled and retained information concerning her private life (see e.g. Application No. 12015/86, Dec. 6.7.88, D.R. 57 p.108).

In the present case, the Commission notes that the applicant is well-known for her involvement in controversial political causes and that she was member of the Workers' Revolutionary Party and is now member of the Marxist Party. She submits that the Security Service is likely to have been involved in installing and monitoring the listening device referring to documents disclosed by the United States authorities which indicate that her activities were subject to the attention of the security services there.

The Government have submitted that the documents concerned date back a number of years and cannot be used to support the inference of continuing security service interest. They also state in relation to the listening device, which H. a former member of the applicant's group had claimed responsibility for, that "H. is not and never has been employed by, an agent of or otherwise connected with the Security Service and has never received instructions from the Service, whether

in respect of the installation of a listening device or otherwise."

The Commission notes that the applicant points out that H. never claimed to have installed or monitored the device and that the Government denial does not cover the monitoring of the device. The Commission however finds it unnecessary to determine the extent to which, if at all, the Security Service could have been involved in the installation or monitoring of the device. The Commission considers that, given the nature of the applicant's continuing political commitments and the interest shown in her by the United States agencies in the past over a considerable period of time, there is a reasonable likelihood that she has been subject to surveillance of some kind by the Security Service in the United Kingdom and that, in all probability, there is a file containing personal information concerning the applicant.

It follows that there has been an interference with the applicant's right to respect for her private life guaranteed under Article 8 para. 1 (Art. 8-1) of the Convention.

The Commission must next determine whether this interference is justified under the second paragraph of Article 8 (Art. 8) of the Convention, namely whether it was "in accordance with the law" and if so, whether it was necessary in a democratic society for one or more of the reasons specified.

"in accordance with the law"

This expression has been interpreted by the Court as importing three requirements - the interference must have some basis in domestic law, the law in question must be accessible to the individual concerned and its consequences for him must also be foreseeable. The Court has further held that the requirement of foreseeability in the special context of security checks in sectors affecting national security cannot be the same as in many other fields. In the LEANDER case (Eur. Court H.R., Leander judgment of 26 March 1987, Series A no. 116) it stated:

> "Thus, it cannot mean that an individual should be enabled to foresee precisely what checks will be made in his regard by the Swedish special police service in its efforts to protect national security. Nevertheless, in a system applicable to citizens generally, as under the Personnel Control Ordinance, the law has to be sufficiently clear in its terms to give them an adequate indication as to the circumstances in which and the conditions on which the public authorities are empowered to resort to this kind of secret and potentially dangerous interference with private life (ibid., p. 32, para. 67)...
>
> In addition, where the implementation of the law consists of secret measures, not open to scrutiny by the individuals concerned or by the public at large, the law itself, as opposed to the accompanying administrative practice, must indicate the scope of any discretion conferred on the competent authority with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see the above-mentioned Malone judgment, Series A no. 82, pp. 32-33, para. 68)."

The Commission finds that the interference in the present case had a valid basis in domestic law, namely, the Security Service Act 1989 which placed the Security Service on a statutory footing for the first time. The Commission also recalls that in the Esbester case (No. 18601/90, Dec. 2.4.93, to be published in D.R.) it found that these provisions satisfied that requirements of accessibility and foreseeability. Consequently the interference was "in accordance with

the law".

"necessary in a democratic society ..."

The Commission recalls that the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. Regard must also be had in this context to the margin of appreciation of the respondent state which in the area of assessing the requirements of and means of pursuing interests of national security has been held by the Court to be wide (Eur. Court H.R., Leander judgment, loc. cit., p. 25 paras. 58-59).

The aim pursued by the interference in the present case was the "interests of national security". The applicant has not alleged any other purpose. While the Court has acknowledged that States may find it necessary to collect and store information on persons in the context of national security, it held that it was crucial given the potential seriousness of resulting invasions of a person's private sphere that there exist adequate and effective guarantees against abuse (Eur. Court H.R., Klass judgment, loc. cit., p. 23 para. 50).

The Commission recalls that the applicant submitted her complaints to the Security Service Tribunal. It notes that the Tribunal consists of lawyers of ten years' experience and who act in an independent capacity. While it does not have jurisdiction to substitute its opinion for that of the Security Service, it has a supervisory role which includes examination of whether the Service had reasonable grounds for making enquiries about an individual. It must also refer to the Commissioner cases where it finds that the Service is not justified in treating a person as a legitimate object of enquiry merely on the ground that he or she is member of a particular group and where it considers that the Service has acted unreasonably with respect to a complainant. The Commissioner is a person who holds or who has held high judicial office and he may make recommendations concerning complaints to the Secretary of State in addition to making an annual report to the Houses of Parliament.

The applicant has complained particularly of the unsatisfactory nature of the Tribunal's determination which gives no explanation for its finding in her case. The Court considered a similar problem in the KLASS case (Eur. Court H.R. Klass judgment, loc. cit., p. 27 paras. 57-58) but found that the State could legitimately fear that the efficacy of surveillance systems might be jeopardised if information is divulged to the person concerned. Similarly, as found in the LEANDER case (Eur. Court H.R., Leander judgment, loc. cit., p. para. 66) the absence of communication to the applicant of the information recorded may ensure the efficacy of the procedure and cannot in itself warrant the conclusion that the interference was not "necessary".

In conclusion, the Commission recalls its finding in the Esbester case (loc. cit.) where it held:

> "In the absence of any evidence or indication that the system is not functioning as required by domestic law, the Commission finds that the framework of safeguards achieves a compromise between the requirements of defending democratic society and the rights of the individual which is compatible with the provisions of the Convention."

Consequently, the Commission concludes that the interference in the present case can be regarded as necessary in a democratic society in the interests of national security.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Article 13 (Art. 13) of the Convention

The applicant complains that she has no effective remedy for her complaints and invokes Article 13 (Art. 13) of the Convention, which provides that:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls however that Article 13 (Art. 13) does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52).

The Commission finds that the applicant cannot be said, in light of its findings above, to have an "arguable claim" of a violation of her Convention rights.

It follows that this complaint must be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)