AS TO THE ADMISSIBILITY OF

Application No. 29107/95
by Louise STEDMAN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 24 August 1995 by Louise STEDMAN against the United Kingdom and registered on 8 November 1995 under file No. 29107/95;

Having regard to 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 1963. She is represented before the Commission by Mr. P. Diamond, a barrister practising in London. The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant commenced employment as an assistant manager in a branch of a travel agency on 13 August 1990. From December 1991 the applicant, along with other staff at the travel agency, was required to work on Sundays. In the period from December 1991 to May 1992 the applicant worked on 10 out of a total of 25 Sundays.

On 27 April 1992 the applicant gave the manager one month's notice that she was no longer prepared to work on Sundays, which she considered should be a day devoted to non commercial, family and religious activities. The applicant's husband worked from Monday to Friday, thus if the applicant worked on Saturday and Sunday her time with her husband was limited. On 7 May 1992 she was told that her contract of employment was to be amended to include Sunday as a normal working day, on a rota basis, with no enhanced rate of pay. Employees who worked a Sunday would receive one day off in lieu during the week and would work a total of five days a week.

The applicant refused to sign the new contract and said that she would continue working under her existing contract. On 4 June 1992 she was dismissed after 22 months of employment, and paid one month's pay in lieu of notice.

The applicant complained to the Industrial Tribunal on 28 October 1992. At a preliminary hearing on 12 July 1993, the Industrial Tribunal unanimously rejected her application as they held that they were without jurisdiction to hear her complaint, as she had been employed for less than the requisite two year period.

The applicant appealed to the Employment Appeal Tribunal, on the grounds that she had a right under Community Law not to be dismissed for refusing to work on Sunday and that this meant that the two year qualifying period did not apply to her. On 31 January 1994 there was a preliminary hearing, followed by a full hearing on 1 March 1994, before the Employment Appeal Tribunal. The Employment Appeal Tribunal held that the applicant could not seek a remedy for unfair dismissal, as she had not been employed for the statutory minimum period of two years and that there was no Community right in this sphere that took primacy over domestic law. The Tribunal also refused to make a reference to the European Court of Justice, as requested by the applicant. The applicant appealed to the Court of Appeal.

On 27 October 1994, Lord Justice Hoffmann recalled that shops were permitted to open as a result of the Sunday Trading Act 1994, which itself was passed in reply to the decision of the European Court of Justice in the case Stoke-on-Trent City Council v. B & Q plc ([1993] AC 900). It that case, the European Court of Justice had found that Article 30 of the EC treaty did not apply to the prohibition on Sunday trading in the Shops Act 1950. Lord Justice Hoffmann found no question of Community law which could warrant a preliminary reference, and dismissed the appeal. The other members of the Court of Appeal agreed.

On 9 March 1995, leave to appeal to the House of Lords was refused.

COMPLAINTS

The applicant complains that her exercise of the Christian faith, which was manifested in her refusal to work on Sundays, resulted in the termination of employment, and that she was unable to seek redress for such termination in the domestic courts.

The applicant complains under Articles 6, 8, 9, 13 and 14 of the Convention.

THE LAW

1. The applicant complains that her dismissal for refusal to work on Sundays constituted a violation of her freedom to manifest her religion in worship, practice and observance, as accorded by Article 9 (Art. 9) of the Convention.

Article 9 (Art. 9) of the Convention provides as follows:

"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 in 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 Commission notes that the applicant was employed and subsequently dismissed by a private company. The respondent State is thus not directly responsible for her dismissal.

The Commission however recalls that under Article 1 (Art. 1) of the Convention, each Contracting States "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention". Hence, if a violation of one of those rights and freedoms is the result of non-observance of that obligation in the domestic legislation, the responsibility of the State is engaged (Eur. Court HR, Young, James and Webster judgment of 25 November 1980, Series A no. 44, p. 20, para. 49). With specific reference to the rights of Article 9 (Art. 9) of the Convention, the State has a responsibility to "ensure the peaceful enjoyment of the right guaranteed under Article 9 (Art. 9) to the holders of those beliefs and doctrines" (Eur. Court HR, Otto-Preminger-Institut v. Austria judgment of 25 November 1994, Series A no. 295 p. 18, para. 47).

The Commission must first consider whether the fact the applicant was dismissed for refusing on religious grounds to accept a contract which meant she would have to work on Sundays, constituted a prima facie interference with her rights guaranteed under Article 9 (Art. 9) of the Convention. Only in circumstance where such a dismissal would constitute such a prima facie interference with her rights under Article 9 (Art. 9) of the Convention could the responsibility of the State be engaged.

The Commission recalls that in Application No. 24949/94, Dec. 3.12.96, unpublished, an employee of the Finnish State Railways was dismissed for failing to respect his working hours on the basis that to work after sunset on a Friday was forbidden by the Seventh-Day Adventist Church, of which he was a member. The Commission held in this case that the applicant was not dismissed because of his religious convictions but for having refused to respect his working hours. In these circumstances the Commission considered that although the refusal was motivated by religious convictions, such a situation did not give rise to protection under Article 9 para. 1 (Art. 9-1). Further the Commission held in that case, that the applicant had failed to show that he was pressured to change his religious views or prevented from manifesting his religion or belief (inter alia he was free to resign). Likewise in the present case the applicant was dismissed for failing to agree to work certain hours rather than her religious belief as such and was free to resign and did in effect resign from her employment.

The Commission thus considers that, had the applicant been employed by the State and dismissed in similar circumstances, such dismissal would not have amounted to an interference with her rights under Article 9 para. 1 (Art. 9-1). A fortiori the United Kingdom cannot be expected to have legislation that would protect employees against such dismissals by private employers. In the absence of the dismissal itself constituting an interference with the applicant's rights under Article 9 (Art. 9), the fact the applicant was not able to claim unfair dismissal before an Industrial Tribunal (who only had jurisdiction over employees of two years standing), cannot, of itself, constitute a breach of Article 9 (Art. 9) of the Convention.

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

2. The applicant complains that the requirement to work on a Sunday constituted an interference with her right to family life and as such constituted a violation of Article 8 (Art. 8) of the Convention.

Article 8 para. 1 (Art. 8-1) of the Convention provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence."

The Commission notes that the applicant was obliged to work on a Sunday on a rota basis rather than every Sunday and was given time off in lieu during the week. The Commission notes that the applicant's husband worked from Monday to Friday and thus on weekends where the applicant was obliged to work on Saturday and Sunday her time with her husband was limited. However, given the almost inevitable compromise and balance between work and family commitments, particularly in families where both partners work, the Commission does not consider that the requirement that the applicant work a five day week to include Sundays on a rota basis, amounted to an interference with her family life such as to constitute a violation of Article 8 (Art. 8) of the Convention.

It follows 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 applicant complains under Article 14 (Art. 14) of the Convention. She claims that Christians are not given the status of a minority racial group and thus have less protection than, for example, Muslims, in respect of religious holy days.

Article 14 (Art. 14) of the Convention provides as follows:

> "The enjoyment of the rights and freedoms set forth in this 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."

On the facts of this case the applicant was dismissed for refusing to work on a Sunday. The dismissal was not based on her religious convictions as such, but on the fact she refused to sign a contract which contained terms (working on a Sunday), with which she disagreed. Nor is there any appearance on the facts as submitted by the applicant, that she was treated in any way differently from employees of any other religious conviction. In these circumstances the Commission considers there is no appearance of any discriminatory treatment of the applicant.

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

4. The applicant complains under Article 6 (Art. 6) of the Convention that she has been denied access to a national court in respect of her dismissal.

Article 6 para. 1 (Art. 6-1) of the Convention provides so far as relevant:

> "1. In the determination of his civil rights ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

The Commission notes that employees of two years standing had access to an Industrial Tribunal to claim unfair dismissal, further in

many cases the employee would have a civil remedy for breach of contract (it appears the applicant had no claim in contract as she was dismissed when she refused to sign a new contract that included a term that she work on Sundays). The Commission recalls that the right of access to a court is not an absolute one. The State is allowed a certain margin of appreciation. The Commission considers that restricting access to an industrial tribunal for unfair dismissal to employees of two years standing, pursued the legitimate aim of offering protection to those in established employment who had given a minimum of two years service to an employer, without burdening the employer to the extent that dismissal within a two year "probationary period" was likely to lead to court proceedings.

The Commission concludes that the restriction of access to an industrial tribunal, to employees of two years standing, was not arbitrary and did not impair the very essence of the right under Article 6 para. 1 (Art. 6-1) of the Convention (see Eur. Court HR, Ashingdane v. the United Kingdom judgment of 28 May 1985, Series A no. 93, p. 24, para. 57).

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

5. The applicant complains under Article 13 (Art. 13) of the Convention that she has been denied an effective remedy.

Article 13 (Art. 13) of the Convention provides:

> "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 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 HR, Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, para. 52).

The Commission finds that it cannot be said that this application discloses any "arguable claim" of a violation of Convention rights.

It follows that this part of the application is 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.

M.F. BUQUICCHIO	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber