

TYLER v. THE UNITED KINGDOM

AS TO THE ADMISSIBILITY OF

Application No. 21283/93
by Thomas TYLER
against United Kingdom

The European Commission of Human Rights sitting in private
on 5 April 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY

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
18 November 1992 by Thomas TYLER against the United Kingdom and
registered on 27 January 1993 under file No. 21283/93;

Having regard to the report provided for in Rule 47 of the
Rules of Procedure of the Commission;

Having regard to :

- report provided for in Rule 47 of the Rules of Procedure of
the Commission;
- the observations submitted by the respondent Government on
3 August 1993 and the observations in reply submitted by
the applicant on 18 August and 5 September 1993;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a citizen of the United Kingdom, born in 1939 and resident in Ipswich.

The facts of the present case may be summarised as follows:

A. The particular circumstances of the case

The applicant is a priest in the Church of England. In 1977 he was appointed incumbent of a parish in the Diocese of Chichester, Sussex. On 27 April 1989 he was informed that one of his parishioners had alleged that he was committing adultery with another parishioner. The matter was reported, apparently in May 1989, to the local archdeacon and on 5 June 1989, after a meeting with the archdeacon, found to be groundless. A further allegation was made concerning a second woman, but it was also not pursued. In February 1990, both women made complaints against the applicant to his bishop. On 18 March 1990 the applicant was suspended from his duties. On 1 May 1990 he had a private interview with his bishop and disciplinary proceedings against him were subsequently initiated. An examiner heard the evidence in September 1990 and decided that there was a case against the applicant to be answered before the Consistory Court.

On 20 November 1990 the Consistory Court found the applicant guilty of five charges of adultery and deprived him of his living by way of sentence. His bishop decided, however, not to deprive him of holy orders.

The applicant appealed against the Consistory Court's decision. The appeal was heard by the Arches Court of Canterbury on 4 April 1991 which ordered a retrial. Pre-trial reviews took place in June and July 1991. Another Consistory Court tried the applicant on 10 September 1991. On 18 September 1991 he was found guilty on two charges of adultery involving one of the women complainants and he was deprived of his living by way of sentence. The Arches Court dismissed the applicant's appeal on 22 May 1992.

The proceedings were the subject of press interest, the main complainant having sold her story to a national newspaper for £11,500 in December 1990, the story to be published after the trial of the applicant if he were found guilty.

B. The relevant domestic law and practice

The ecclesiastical law of England is as much the law of the land as any other part of the law. It is grounded in both common and statute law and is altered from time to time by statute or by measure, a form of legislation initiated by the Church of England but requiring Parliamentary approval. The Ecclesiastical Jurisdiction Measure 1963 established the present system of ecclesiastical courts in the Church of England. Part of the jurisdiction of these courts involves the enforcement of clerical discipline. Each diocese has a Consistory Court, with the possibility of appeal to either the Arches Court of Canterbury or the Chancery Court of York. The Privy Council has jurisdiction on appeal in doctrinal matters.

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Each Consistory Court is presided over by a chancellor, a legally qualified judge appointed by the bishop on a permanent post. On taking office he swears an oath of allegiance to the Queen, and an oath that he will deal "uprightly and justly ... without respect of favour or award". He sits with four assessors at the trial of a priest for any disciplinary offence. The assessors are chosen by ballot from panels of priests and laymen in equal proportions. Appointments to the assessors' panels are made by the diocesan synod and are for a period of six years. Assessors' functions are the same as those of a jury in the Crown Court and their decision must be unanimous. Five judges sit on the Arches Court of Canterbury or the Chancery Court of York, the president being the same person for both Courts. He is called the Dean of the Arches and Auditor and is a person who holds or has held high judicial office or is a lawyer of at least 10 years' standing, appointed on a permanent post by the chairman of the House of Laity of the General Synod, after consultation with the Lord Chancellor. The other four are two people in holy orders and two laymen. Each judge in the Arches Court takes the same oaths as the chancellor in the Consistory Courts.

A priest may be disciplined under Section 14 (1) of the Ecclesiastical Jurisdiction Measure 1963 for conduct unbecoming the office and work of a clerk in holy orders by way of a criminal suit before a Consistory Court. The proceedings may be initiated by a complaint to the clergyman's bishop, who decides whether to proceed with the matter after a private interview with the accused and the complainant. If the matter is to be pursued, it is referred to an examiner, selected by ballot from a panel appointed by the diocesan synod, for an inquiry to be made. The parties may be assisted by friends, advisers or lawyers. Evidence is given by affidavit or orally on oath. If the examiner decides that there is a case to answer it is referred to a promoter (the prosecutor) of the complaint, on nomination by the bishop, who in turn refers the matter to the registrar of the Consistory Court. This is called lodging the articles. The accused may submit a written reply to the Court, admitting or denying the offence. The trial takes place within 28 days after the lodging of the articles.

The rules as to the admissibility of evidence and as to the competency or compellability of witnesses are the same as those at a criminal trial in the Crown Court. Any findings of guilt and the censure (the sentence) must be set out in a written judgment and pronounced in open court.

An appeal on law and/or fact from the Consistory Court to the Arches Court of Canterbury or the Chancery Court of York must be made within 28 days of the Consistory Court's decision. The two appeal courts, deciding by majority opinion, have power to review the evidence, confirm, reverse or vary any decision of the Consistory Court, or remit the case for further proceedings before the latter court.

The censures which may be pronounced against an accused found guilty of an offence under the Ecclesiastical Jurisdiction Measure 1963 are deprivation, inhibition, suspension, monition and rebuke. A censure of deprivation may be followed by the extra-judicial act of deposition from holy orders. A censure of deprivation is the removal

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of the person from the office he holds and his disqualification from holding such office in the future.

COMPLAINTS

The applicant complains that he is the victim of a violation of Article 6 paras. 1 and 2 of the Convention.

He alleges that the press coverage of his case prevented a fair hearing and that the proceedings did not take place within a reasonable time, delays largely being due to the prosecution.

The applicant claims that he was not heard by an independent and impartial tribunal. He states, *inter alia*, that there was no substantial or corroborative evidence against him, that the proceedings and structure of the ecclesiastical courts in his case defy any notion of independence or impartiality, given the involvement of the bishop and the Diocese of Chichester to whom the original complaints had been made, alleged collusion between the prosecution and the diocesan officers, the presence of clergymen on the court panels, and the all pervading influence of the Church of England, which was the only source of legal aid, tardily awarded. He contends that the Church of England has been prosecution, judge and jury in the proceedings against him, in breach of Article 6 para. 1 of the Convention.

As regards the second paragraph of Article 6, he refers, *inter alia*, to an alleged lack of evidence against him, the unimpeachable testimony of defence witnesses, the adverse publicity surrounding the proceedings and the absence of any convictions of any kind throughout his life.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 November 1992 and registered on 27 January 1993.

The Commission invited the parties to submit written observations on admissibility and merits on 3 May 1993. The Government's observations were submitted on 3 August 1993. The applicant replied on 18 August 1993, and submitted further comments on 5 September 1993.

THE LAW

1. The applicant alleges that the courts which dealt with his case were not independent and impartial within the meaning of Article 6 (Art. 6) of the Convention, and that this provision has thereby been breached. Article 6 (Art. 6) of the Convention provides, so far as relevant, as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

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The Government submit that in respect of this complaint the applicant has not exhausted domestic remedies in that he did not put his complaint concerning the Consistory Court to the Court of Arches. The applicant points out that he regards both the Consistory Court and the Court of Arches as lacking in independence and impartiality, and that it is impossible to appeal to a court that has just rejected an appeal on the grounds that that same court is lacking in impartiality.

The Commission notes that the applicant's complaint as to the independence and impartiality of the tribunals which dealt with his case is that their composition was in violation of the Convention. He does not suggest that they were in contravention of domestic law. Accordingly, given an applicant's inability to invoke the Convention directly in the courts in the United Kingdom, and in the absence of any authority cited by the Government to show that the applicant could otherwise have challenged the domestically lawful composition of the Consistory Court before the Court of Arches, the Commission finds that the applicant was not required to allege structural lack of impartiality or independence to the latter tribunal. The Commission therefore rejects the Government's submissions as to exhaustion of domestic remedies.

The Commission must next determine whether the proceedings involving the applicant determined a "criminal charge" against the applicant, whether they determined his "civil rights and obligations", or whether they fell outside either of these categories.

As to the question of whether the proceedings determined a "criminal charge", the Government submit that the criteria first set out in the Engel case (Eur. Court H.R., Engel judgment of 23 November 1976, Series A no. 22) indicate that the proceedings were not "criminal". The applicant points out that the ecclesiastical courts are modelled on criminal courts, that the burden of proof is that used in criminal courts, that the church employed a barrister to "prosecute" the case who specialises in criminal law, and that the sentence has caused him considerable financial hardship.

The Commission notes that ecclesiastical law in the United Kingdom describes proceedings for conduct unbecoming a priest as a "criminal suit", and further notes that ecclesiastical law is a fully integrated part of ordinary domestic law. However, the definition of an offence in the internal legal system is only one criterion in determining whether proceedings determine criminal charges, and is not decisive (cf. Eur. Court H.R., Demicoli judgment of 27 August 1991, Series A no. 210, p. 15, para. 31).

Of greater importance in assessing the applicability of the term "criminal charge" in a particular case are the criteria of the "very nature of the offence" and the "degree of severity of the penalty that the person concerned risks incurring" (above-mentioned Demicoli judgment, pp. 16, 17, paras. 33, 34). The Commission recalls that "[d]isciplinary sanctions are generally designed to ensure that members of particular groups comply with the specific rules governing their conduct" (Eur. Court H.R., Weber judgment of 22 May 1990, Series A no 177, p. 18, para. 33). The Commission considers that the charge of "conduct unbecoming a priest" is not inherently criminal in nature. The specific charge in the present case, adultery, is one of behaviour which

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commonly is not criminal in member states of the Council of Europe. It is rather within the category of disciplinary matters generally designed to ensure that the members of particular groups, in the present case clergy in the Church of England, comply with the specific rules governing their conduct. Finally in this respect, the Commission finds that although the applicant undoubtedly suffered financial loss as a result of the "sentence" in his case, that loss was not itself the penalty. Rather, the loss was the indirect result of the penalty of "deprivation".

The Commission finds that the proceedings in which the applicant was involved did not determine a "criminal charge" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

As to the question whether the proceedings against the applicant determined "civil rights and obligations", the Government submit that the applicant's functions as a priest are more in the nature of public service than they are private professional practice. Pointing to Commission case-law to the effect that Article 6 para. 1 (Art. 6-1) of the Convention does not apply to disputes concerning the dismissal of civil servants (eg, No. 10878/84, Dec. 4.12.84, D.R. 41, p. 247), they consider that, although the applicant was not a State employee, he did not exercise a private right to continue his work as a priest and that the ecclesiastical proceedings did not therefore determine his "civil rights". The applicant considers that the requirement to leave his house, and a request that he leave his parish, constituted a determination of his civil rights. He also submits that a person ordained as a priest has a civil right to exercise his priestly ministry within the Church.

The Commission notes that the Church of England is structurally a separate entity from the State, although there is some overlapping of functions because of the Church's traditionally close links with the State. Thus bishops participate in the legislative process and the monarch is also temporal head of the Church. The Commission next notes that the effect of the applicant's deprivation was to prevent him from continuing to act as a priest within the Church of England. Whilst he was not deprived of holy orders, as a direct consequence of the deprivation he lost his income, his pension rights, and the free accommodation which he had enjoyed until then. The Commission is not, however, required to decide whether the proceedings in the present case determined the applicant's civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, as, even if they did, the application is in any event manifestly ill-founded for the following reasons.

The Commission must ascertain whether the proceedings were held before an "independent and impartial tribunal" within the meaning of Article 6 (Art. 6) of the Convention.

Before the Consistory Court the proceedings were determined by the chancellor of the diocese sitting with four assessors. The Government submit that the diocesan chancellor is always a qualified and experienced lawyer, that his appointment, by the bishop, is permanent, and that he may only be removed in exceptional circumstances. The applicant underlines that the chancellor is appointed by the bishop, and considers that the Consistory Court is not independent of the Church of England, as it should be. He also points out that the Government fail to consider the position of the

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assessors, who are drawn from a very small group of people all of whom are drawn from the diocesan Synod, and so cannot be expected to be impartial in the first place.

The Commission finds it appropriate for a tribunal dealing with what are essentially disciplinary matters to have some participation from the body concerned. In the present case the diocesan chancellor was appointed by the bishop, but he had permanent tenure and was required to be a lawyer of at least 7 years' standing. In the absence of specific allegations of bias, mere appointment by the equivalent of an executive organ cannot be seen to impeach the independence of the chancellor (cf., for example, Eur. Court H.R., Sramek judgment of 22 October 1984, Series A no. 84, p. 18, para. 38). The Commission notes that the chancellor is required to take an oath of independence which acts as a guarantee of a certain degree of independence from the body nominating him (cf. Eur. Court H.R., Ettl judgment of 23 April 1987, Series A no. 117, p. 18, para. 38). The applicant has not alleged that any of the judges in the case actually took instructions or was actually biased.

Whilst it is true that the chancellor sat with four assessors, and that two of the assessors were clergy and two were laymen, the Commission finds that there are no specific reasons in the present case to assume that the assessors, whose role is similar to that of a jury, were in any way partial or not independent. The position is different from that where certain members of the jury have declared political affiliations in cases concerning subjective matters of defamation and where there are connections between the jurors and the other party (cf. Eur. Court H.R., Holm judgment of 25 November 1993, Series A no. 279-A). In particular, the fact that members of the disciplining body participate in the exercise of disciplinary jurisdiction over other members cannot suffice to bear out a charge of bias, even where Article 6 (Art. 6) is applicable (cf. Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 25, para. 58). As the Court there pointed out, personal impartiality is to be presumed until there is proof to the contrary.

The Commission finds that the Consistory Court complied with the requirements of Article 6 (Art. 6) of the Convention as to independence and impartiality.

The Commission next turns to the Court of Arches. The Dean of the Arches is a person who holds or has held high judicial office. The other four members comprise two clergymen and two laymen. Each of the five is appointed permanently, and each takes an oath of independence.

The Commission, for reasons similar to those pertaining to the Consistory Court, finds that the Court of Arches also complied with the requirements of Article 6 (Art. 6) as to independence and impartiality.

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 also alleges violation of Article 6 (Art. 6) of the Convention in other respects. In particular, he alleges violation of Article 6 para. 2 (Art. 6-2) of the Convention.

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Insofar as the applicant's further complaints relate to criminal proceedings, the Commission recalls that it has found that the proceedings involving the applicant did not determine a criminal charge within the meaning of Article 6 (Art. 6) of the Convention. To this extent, therefore, the Commission cannot deal with the applicant's complaints.

With regard to the judicial decisions in the case, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its constant case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236 ; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77 ; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

To the extent that the Commission is nevertheless able to consider the applicant's complaints under Article 6 para. 1 (Art. 6-1) of the Convention, it recalls that the proceedings, which it has found to have been civil in character, lasted from approximately May 1989 to May 1992, that is a total of three years. Having regard to the fact that the proceedings were repeated, and to the criteria established by case-law and having regard to all the information in its possession, the Commission finds that the length of the proceedings complained of did not exceed the "reasonable time" referred to in Article 6 para. 1 (Art. 6-1) of the Convention.

To the extent that the applicant complains about prejudicial press coverage of the case, the Commission notes that the applicant has not submitted any evidence as to the nature of the reporting of the events, nor has he shown that that coverage affected the fairness of the trial in any way. In particular, although it is true that the applicant alleges that the principal witness for the Church sold her story to a national newspaper, he has not shown what, if any, impact that had on the proceedings.

The Commission concludes that the remainder 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.

Secretary to the Commission
Commission

President of the

(H.C. KRÜGER)

(C.A. NØRGAARD)