

AS TO THE ADMISSIBILITY OF

Application No. 24833/94
by Denise MATTHEWS
against the United Kingdom

The European Commission of Human Rights sitting in private on 16 April 1996, the following members being present:

MM. S. TRECHSEL, President
C.L. ROZAKIS
E. BUSUTTIL
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
B. CONFORTI
N. BRATZA
J. MUCHA
E. KONSTANTINOV
C. BÎRSAN
P. LORENZEN
K. HERNDL

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 April 1994 by Denise MATTHEWS against the United Kingdom and registered on 5 August 1994 under file No. 24833/94;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;
- the observations submitted by the respondent Government on 22 May 1995 and the observations in reply submitted by the applicant on 10 July 1995;
- the Commission's decision of 27 November 1995 to hold a hearing on the admissibility and merits of the application;
- the parties' oral submissions at the hearing on 16 April 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen born in 1975. She was born and lives in Gibraltar, and is represented before the Commission by Mr. M. Llamas, barrister, of Messrs. Brizay London, avocats, Paris. The facts of the case, as submitted by the parties, may be summarised as follows.

The particular circumstances of the case

The applicant applied on 12 April 1994 to the Electoral Registration Officer for Gibraltar to be registered as a voter at the elections to the European Parliament. The Electoral Registration Officer replied on 25 April 1994 that:

"The provisions of Annex II of the EC Act on Direct Elections of 1976 limit the franchise for European Parliamentary Elections to the United Kingdom. This act was agreed by all member states and has treaty status. This means that Gibraltar will not be included in the franchise for the European Parliamentary Elections."

Relevant non-Convention law

Gibraltar is a Crown Colony of the United Kingdom. It is largely self-governing, having a Governor appointed by the United Kingdom and an elected House of Assembly. It is part of the territory of the European Union because the United Kingdom is responsible for its external relations within the meaning of Article 227 (4) of the EC Treaty. EC law is therefore applicable in Gibraltar. Certain areas of EC law, such as the rules on the Common Agricultural Policy, the Common Commercial Policy, and Value Added Tax, do not apply.

The EC Act on Direct Elections of 1976 is annexed to Council Decision 76/787/ ECSC, EEC, Euratom. The Council Decision itself is signed by the President of the Council and by the Ministers representing the Member States as members of the Council. The Decision recommends States to adopt the provisions of the Act in accordance with their respective constitutional requirements, and requires them to notify the Council when the procedures have been completed. The Act, signed on behalf of the Member States, declares that the representatives of the States shall be elected by direct universal suffrage, and creates the framework for direct elections to the European Parliament. Annex II, which is stated in the Act to be an integral part thereof, declares "The United Kingdom will apply the provisions of the Act only in respect of the United Kingdom". Its provisions were enacted into domestic United Kingdom law by the European Parliamentary Elections Act 1978.

The Treaty on European Union (TEU) entered into force on 1 November 1993. The following matters are of particular relevance in the present case (references to TEU are to the provisions which were introduced by that Treaty; references to the EC Treaty are to pre-existing provisions).

1. Article 138b TEU entitles the European Parliament formally to request the Commission for appropriate proposals on "matters on which it considers that a Community act is required ...".
2. Article 189 TEU lists as the bodies which make regulations and issue directives the European Parliament acting jointly with the Council, the Council, and the Commission.
3. Article 189b TEU provides for an increased role for the Parliament in the passing of certain types of legislation. Under Article 189b the Parliament has a genuine power of co-decision with the Council: that is, both Parliament and Council must agree before an act may come into being under Article 189b. Any act passed under Article 189b is signed by the President of the Parliament and the President of the Council.

Article 189b applies where "reference is made in this Treaty to

this Article for the adoption of an act". In the context of legislative measures, the Article 189b procedure is used mainly for acts relating to the completion of the internal market.

4. Article 189c TEU provides for an increased role for the European Parliament in connection with other types of legislation. Under Article 189c, if the European Parliament rejects a common position (adopted by the Council after a procedure involving the Commission), the Council may ultimately only adopt the act by unanimity. The full text of Article 189c is set out in the Annex to the present decision. Article 189c applies where "reference is made in this Treaty to this Article for the adoption of an act". The Article 189c procedure is used as a consultation and co-operation mechanism in connection with, for example, certain transport matters (Article 75 TEU), the implementation of the Social Fund (Article 125 TEU) and certain environmental measures (Article 130s TEU).
5. Article 158 (2) TEU increases the European Parliament's influence and powers in the appointment of the President and members of the Commission; the power to pass a motion of censure (Article 144 EC Treaty) is retained, and in addition to its power to put questions to members of the Commission (Article 140 EC Treaty), the European Parliament may now set up Commissions of Inquiry (Article 138c TEU).
6. The TEU does not affect the powers of financial control of the European Parliament over the other organs of the European Union.

COMPLAINTS

The applicant alleges violation of Article 3 of Protocol No. 1 to the Convention. She considers that the European Parliament is now, by virtue of the Treaty on European Union, a legislature within the meaning of Article 3 of Protocol No. 1, and that she should therefore be entitled to vote in the European elections.

The applicant also alleges a violation of Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1 as she is a British national but, because of her status as a Gibraltarian, she is deprived of the right to vote in European elections. She also alleges a violation of Article 14 in this connection as, pursuant to EC Council Directive 93/109/EC, she is entitled to vote in European Parliament elections in any territory in the European Union in which she resides save Gibraltar. She sees discrimination between citizens of Gibraltar in this respect.

A complaint initially made under Article 3 of the Convention was subsequently withdrawn.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 18 April 1994 and registered on 5 August 1994.

On 10 January 1995 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 22 May 1995, after an extension of the time-limit fixed for that purpose. The applicant replied on 10 July 1995.

On 26 May 1995 the Commission granted the applicant legal aid.

On 27 November 1995 the Commission decided to hold a hearing on the admissibility and merits of the application.

At the hearing, which was held on 16 April 1996, the parties were represented as follows:

The Government:

Mr. Martin EATON, Agent of the Government
Mr. David ANDERSON, Counsel
Mr. Donald MACRAE, Adviser, Cabinet Office Legal Adviser
Mr. Robert GWYNN, Adviser, Foreign and Commonwealth Office

The applicant:

Mr. Michael LLAMAS, Barrister
Ms. Jill KEOHANE, Legal Draftsman to the Gibraltar Government
Mr. Lewis BAGLIETTO, Barrister
Mr. Fabian PICARDO, Barrister

THE LAW

The applicant alleges a violation of Article 3 of Protocol No. 1 (P1-3) to the Convention, taken alone and in conjunction with Article 14 (P1-3+14) of the Convention. Article 3 of Protocol No. 1 (P1-3) to the Convention provides as follows.

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The Government's principal submission is that the Commission has no jurisdiction to consider the case. They give three reasons for this lack of jurisdiction. First, they submit that Annex II to the EC Act on Direct Elections to the European Parliament is an integral part of the Act, and therefore forms part of Community law: they recall that the EC legal system is a new legal order, so that acts which are part of it - such as the Act on Direct Elections, with its Annexes - are not part of national law, and escape review by the Convention organs. Secondly, they contend that the word "legislature" in Article 3 of Protocol No. 1 (P1-3) means the national legislature. As the European Parliament is not an organ of the United Kingdom, but part of the European Union, the European Parliament cannot be the (national) legislature in Gibraltar. Thirdly, the Government contend that the European Parliament is, in any event, not a legislature. They take, as typical powers of a legislature, the power to initiate laws and the power to adopt laws, and draw the conclusion that the European Parliament has neither. They consider that there is no power to initiate legislation, as the possibility of a request to the Commission under Article 138b TEU cannot be regarded as a power of initiation. Whilst they accept that Articles 189b and 189c expand the involvement of the European Parliament in the Community legislative process, they view that involvement as - at its strongest - a mere power of veto, which is not a mark of a proper legislature. The Government also point out that the European Parliament has no role to play in large areas of European Law, such as the Common Commercial Policy, and only a marginal role in the field of economic and monetary union. The Government consider that the powers of the European Parliament are not substantially different now from when the Commission considered them before the entry into force of the Treaty on European Union.

Even if Article 3 of Protocol No. 1 (P1-3) were to apply to the

European Parliament, the Government do not accept that there would be a breach of the provision. They refer to the margin of appreciation permitted to States in the performance of their Convention obligations, to the traditional separation of the Gibraltarian and the United Kingdom electoral systems, and to the difficulties in creating a new constituency for Gibraltar in the European Parliament (Gibraltar's size, and the need to obtain the consent to the amendment of all other member States of the Union).

The applicant takes as starting point that as a result of the exclusion of Gibraltar from the operation of the EC Act on Direct Elections by the inclusion of Annex II, she is subject to a large amount of legislation which emanates from the European Union and in which she has no possibility whatever of democratic participation. She considers that because of the limited domestic legislative activity in Gibraltar, the impact of European legislation may be greater in Gibraltar than in many member States, notwithstanding the exclusion of Gibraltar from certain areas of European Union action. She contends that the powers of the European Parliament were fundamentally changed by the Treaty on European Union and that in consequence of its increased powers to formulate and adopt legislation the Parliament must be regarded as a "legislature" within the ordinary meaning of the term. Moreover, as a representative body which at least in part assumes the powers and functions of the national legislature, the European Parliament is properly to be regarded as included within "the legislature" of Gibraltar for the purposes of Article 3 of Protocol No. 1 (P1-3).

The applicant finds the responsibility of the United Kingdom primarily on their having included Gibraltar in the European Union (pursuant to Article 227 (4) EC Treaty), but having unilaterally excluded it from the 1976 EC Act on Direct Elections. She contends that the Act which excluded Gibraltar from the right of franchise cannot be regarded as a Community act over which the Convention organs have no jurisdiction; rather it is a treaty entered into by the United Kingdom in the exercise of sovereign powers.

In the absence of any elections in Gibraltar to the European Parliament, the applicant draws the conclusion that Article 3 of Protocol No. 1 (P1-3) has been violated. She does not accept the Government's reasons of expediency for not giving Gibraltarians a vote in the election of members of the European Parliament.

The Commission considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, including questions concerning the responsibility of the United Kingdom for the matters complained of. The determination of these issues should depend on an examination of the merits of the application as a whole. The Commission concludes, therefore, that the application is not manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(S. TRECHSEL)