

AS TO THE ADMISSIBILITY OF

Application No. 36908/97
by Ian STEWART-BRADY
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 21 October 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
I. BÉKÉS
G. RESS
A. PERENIČ
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 29 April 1997 by Ian STEWART-BRADY against the United Kingdom and registered on 17 July 1997 under file No. 36908/97;

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 United Kingdom citizen born in 1938. He is detained in Ashworth Hospital. Before the Commission the applicant is represented by Mr Benedict

Birnberg of B.M. Birnberg & Co., London. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Particular circumstances of the case

In 1966 the applicant was convicted of murder and was given a life sentence. He is detained in Ashworth Hospital in Liverpool, having been transferred there subject to a direction in 1985, under the Mental Health Act 1983. He suffers from a mental disorder, and is regarded as presenting a danger to the public.

On 26 July 1995 a national newspaper published an indistinct photograph showing the applicant standing in front of a window at the hospital. The photograph had been taken without the applicant's knowledge with a long-range lens camera from the outside perimeter of the hospital, and illustrated a report headlined "Well-fed face of evil child murderer Ian Brady". The article itself stated that the photograph showed "the new face of Moors murderer Ian Brady - bloated by soft living in a cushy prison".

On 3 August 1995 the Chief Executive of the Special Hospital Services Authority lodged, on the applicant's behalf, a complaint with the Press Complaints Commission alleging that the taking and publication of the applicant's photograph represented a gross intrusion into the latter's privacy.

On 27 September 1995 the Press Complaints Commission dismissed the complaint in the following terms:

"The provisions of the Code of Practice upheld by the Press Complaints Commission which relate to the privacy of individuals in hospitals or similar institutions are designed to prevent distress and unwanted publicity for those who, because of their illness, may be in a vulnerable position. However, as well as being a patient at Ashworth, Ian Brady is also a notorious child murderer - a matter in itself which justifies scrutiny of him in the public interest - and the [Press Complaints] Commission noted that the indistinct photograph of him published by [a national newspaper] was only able to be taken as he was in a position from which he could be photographed."

The applicant started judicial review proceedings against the decision of the Press Complaints Commission. On 25 January 1996 a judge dismissed the applicant's request.

On 6 March 1996 a judge of the High Court of Justice dismissed a renewed request for leave to move for judicial review lodged by the applicant's counsel. In the reasons for his decision the judge held that the purpose of the photographs was to help to make the point to the readers which the article was seeking to make about the conditions under which the applicant was kept and the treatment which he received.

On 18 November 1996 the Court of Appeal dismissed a renewed application for leave to apply for judicial review in relation to the aforesaid decision of the Press Complaints Commission. The court noted that the photograph in question had

accompanied an article the publication of which was justified by the public interest in showing the way in which criminal offenders were being treated. The court further found that the photograph was indistinct and was not in itself objectionable, and that it had been taken without intrusion or harassment or any exploitation of the vulnerability of the applicant. It therefore found no reason for granting the applicant's request.

B. Relevant domestic law

Clause 4 of the Code of Practice governing the decisions of the Press Complaints Commission provides as follows:

"Intrusion and enquiries into an individual's private life without his or her consent including the use of long-lens photography to take pictures of people on private property without their consent are not generally acceptable and publication can only be justified when in the public interest."

COMPLAINTS

The applicant complains that the United Kingdom authorities dealing with his case failed to comply with their obligation to ensure respect for his private life. He alleges a violation of Article 8 of the Convention.

THE LAW

The applicant complains that the United Kingdom authorities dealing with his case failed to comply with their obligation to ensure respect for his private life. He alleges a violation of Article 8 of the Convention which provides, so far as relevant, as follows:

"1. Everyone has the right to respect for his private ... life, ..."

The Commission does not consider it necessary to determine whether the applicant has complied with the requirement as to the exhaustion of domestic remedies laid down in Article 26 of the Convention since, in any event, the application is inadmissible for the reasons set out below.

The Commission notes that there is no question in the present case of any involvement by the United Kingdom authorities in the publication of the contentious photograph.

The Commission recalls that in limited circumstances Article 8 of the Convention may impose positive obligations on a High Contracting Party to ensure an effective respect for an individual's private life. The nature and extent of the State's obligation in this respect will depend on the particular aspect of private life that is at issue (see Eur. Court HR, X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, pp. 11-12, paras. 23 and 24).

In the present case, the Press Complaints Commission dismissed the complaint lodged on the applicant's behalf on the ground that his conviction of murder justified scrutiny of him in the public interest. Subsequently, the courts refused to grant the request for leave to move for judicial review of the aforesaid decision. They noted, in particular, that the photograph in question had accompanied an article the publication of which was justified by the public interest, that the photograph was not in itself objectionable, and that it had been taken without intrusion or harassment or any exploitation of the vulnerability of the applicant.

Taking into account the above particular circumstances of the applicant's case the Commission considers that in dismissing the complaint lodged on behalf of the applicant and in refusing a remedy the authorities concerned did not act arbitrarily or otherwise in disrespect of the applicant's rights under Article 8 of the Convention.

It follows that the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber