

APPLICATION/REQUÊTE N° 8873/80

X. v/UNITED KINGDOM

X. c/ROYAUME-UNI

DECISION of 13 May 1982 on the admissibility of the application

DÉCISION du 13 mai 1982 sur la recevabilité de la requête

Article 63 of the Convention : *The declaration made under this provision shows that this island does not form integral part of the United Kingdom.*

Article 3 of the First Protocol : *Residents of Jersey unable to participate in elections to the United Kingdom Parliament. In spite of the legislative competence which the latter exercises occasionally with regard to Jersey, it cannot be argued that the United Kingdom in ratifying the First Protocol had intended to alter a constitutional relationship in existence since numerous centuries.*

Article 63 de la Convention : *La déclaration faite en application de cette disposition à l'égard de Jersey montre que cette île ne fait pas partie intégrante du Royaume-Uni.*

Article 3 du Protocole additionnel : *Absence de droit de vote des habitants de Jersey lors de l'élection du Parlement de Westminster. Malgré les compétences législatives que ce dernier exerce parfois à l'égard de Jersey, on ne peut admettre qu'en ratifiant le Protocole additionnel, le Royaume-Uni ait entendu modifier un régime constitutionnel déjà vieux de plusieurs siècles.*

THE FACTS

(français : voir p. 106)

The facts as they have been submitted by the applicant may be summarised as follows

The applicant is a United Kingdom citizen, residing in Jersey, Channel Islands. He complains that as such, he is not entitled to vote in an election for the Westminster Parliament, although he is resident on the Island of Jersey.

He points out that no other resident of Jersey is entitled to vote, since the United Kingdom Parliament is comprised of 635 constituencies, of which there are none in respect of British territories outside the United Kingdom such as Jersey. Nevertheless the applicant points out that the United Kingdom Parliament is competent to and does legislate in respect of Jersey, although Jersey also has a local legislature, the States, and certain constitutional conventions restrict the normal operation of the United Kingdom Parliament's legislative competence.

COMPLAINTS

The applicant complains that exclusion from eligibility to vote in the elections to the United Kingdom Parliament as a resident in Jersey, although the United Kingdom Parliament is in his view a legislature in respect of Jersey, constitutes a breach of Article 3 of the First Protocol to the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The present application was introduced on 14 May 1978 and registered on 8 January 1980. On 6 October 1981 the Commission decided to declare part of the application inadmissible and to bring the remainder of the application to the notice of the United Kingdom Government, pursuant to Rule 42, paragraph 2 (b) of the Commission's Rules of Procedure and to invite them to submit observations on its admissibility and merits as far as the complaint relating to the applicant's non participation in elections to the United Kingdom Parliament is concerned.

The United Kingdom Government's observations on the admissibility on this aspect of the application are dated 22 January 1982. On 15 February 1982 the President of the Commission, acting in accordance with Rule 7 of the Addendum to the Commission's Rules of Procedure (Legal Aid) decided that legal aid should be granted to the applicant, who appointed Mr W.A. Nash, solicitor, of London, to represent him.

The applicant's observations in reply to those of the United Kingdom Government are dated 19 March 1982.

SUBMISSIONS OF THE GOVERNMENT

The Government first point out that entitlement of vote in elections to the United Kingdom Parliament depends upon Section 1 of the Representation of the People Act 1949, and includes the requirement that an elector is included on a register of parliamentary electors for a particular parliamentary constituency. They point out that there are no constituencies in respect of

British territories outside the United Kingdom and that therefore there are no constituencies in respect of Jersey, which is such a British territory.

They add that the electoral law of Jersey, relating to elections to the States, the Jersey legislative assembly, is dependant upon having attained the age of majority, being ordinarily resident in a parish in Jersey, and complying with certain nationality and other citizenship requirements, including being a British subject, or a citizen of the Republic of Ireland.

The Government submit that the Bailiwick of Jersey is not part of the United Kingdom but is a dependancy of the Crown with its own legislative assembly (States), courts of law, legal, administrative and fiscal systems. The United Kingdom Government is responsible however for defence matters and international relations and the British Crown is ultimately responsible for Jersey's good government. The Crown fulfills this responsibility through the Privy Council, and in particular through the Home Secretary who is the Minister with prime responsibility for island affairs.

The principle sources of law in Jersey are

- a. the Royal Charters of which none have been granted for 300 years.
- b. Prerogative orders made by the Sovereign in Council, of which only one has recently been made, relating to territorial waters.
- c. Acts of the United Kingdom Parliament.
- d. Laws passed by the States of Jersey, which have received the assent of the Sovereign in Council.
- e. Regulations passed by the States of Jersey, which do not require the assent referred to in d., but have a maximum validity of three years.

Although an Act of the United Kingdom Parliament may apply directly to Jersey, by constitutional convention such Acts are not passed in respect of matters which are entirely domestic to the island without the agreement of the Jersey authorities. Mixed provisions, relating partially to Jersey's domestic affairs but to which international considerations apply, will not normally be legislated upon without consultation with the Jersey authorities and direct legislation by the United Kingdom Parliament is thus very rare.

A further possibility arises when an Act of Parliament may contain a provision empowering the Sovereign in Council to extent the Act in question to Jersey by order in Council, subject to adaptations as may be required, which will themselves be established by the Jersey authorities. Thus, in the United Kingdom Government's submission, to all intents and purposes Jersey is autonomous in respect of its internal affairs.

In addition the States may pass further legislation apart from the ordinances referred to above, these being "projets de loi" which are submitted

to the Sovereign in Council for the Royal assent, which, with the exception of financial provisions, is required for their coming into effect.

With respect to the admissibility of the application, the United Kingdom Government refer to Application No. 1065/61, X and others against Belgium (Yearbook 4, p. 260), which relates to the electoral status of a Belgian citizen domiciled in the Belgian Congo (now the Republic of Zaire). They thus maintain that a High Contracting Party may exclude certain categories of citizen, such as for example, overseas residents, from voting in parliamentary elections, provided that such exclusion does not prevent the free expression of the opinion of the people in the choice of the legislature. The United Kingdom government therefore submits that the present application is incompatible with the provisions of the Convention.

In the alternative the United Kingdom Government submits that the application should be declared manifestly ill-founded, in that the electoral law of the United Kingdom enables only those on the electoral register for a constituency at the time of a parliamentary election to vote in that constituency at that election, and that it is not unreasonable that a person, who is not ordinarily resident in any constituency in the United Kingdom should be debarred from voting in such a constituency.

SUBMISSIONS OF THE APPLICANT

The applicant does not dispute the summary of the electoral and legislative position in the United Kingdom and Jersey submitted by the United Kingdom Government.

However the applicant points out that the constitutional convention whereby the United Kingdom Parliament does not normally legislate for matters which are domestic to Jersey is subordinate to the supremacy of the United Kingdom Parliament itself. In consequence there is no doubt in his submission that as a matter of constitutional law the United Kingdom Parliament can if it wishes legislate for the Island of Jersey, even against the wishes of the local legislative assembly, or without consultation with the local authorities.

Furthermore the applicant points out that the United Kingdom Government merely indicates that the incidence of direct legislation without consultation is "very rare", but thereby concedes that in appropriate circumstances the United Kingdom Government can and does legislate directly. The applicant therefore submits that the United Kingdom Parliament is a "legislature" with respect to Jersey within the meaning of Article 3 First Protocol.

In respect of the admissibility of the application, the applicant points out that the Commission itself has reviewed its decision in Application N° 1065/61 in its subsequent consideration of Applications No. 6745 and

6746/74, W., X., Y. and Z. against Belgium (D.R. 2, p. 110) and relies in particular on the following passage at page 116 : "the Commission understands this to mean that States may impose certain restrictions on the right to vote ... provided that they are not arbitrary and do not interfere with the free expression of the people's opinion. It is for the Commission to decide in each case whether or not this negative condition is fulfilled."

The applicant distinguishes the present case from cases where the Commission has considered the situation of persons resident abroad, or subject to age limits for voting purposes, or deprived of their civil rights by reason of an order of a court. In the present case he is directly effected by Acts of the United Kingdom Parliament but neither he, nor any other resident upon Jersey, possesses the right to vote for the legislature. He points out that the position of Channel Island residents, as well as those of the Isle of Man, to whom similar restrictions apply, constitutes a significant minority of the population of the United Kingdom who are disenfranchised without justification and submits that this situation does not ensure "the free expression of the opinion of the people" as provided for by Article 3 First Protocol.

Finally, with specific reference to the United Kingdom Government's submission that the present application should be declared inadmissible as manifestly ill-founded, the applicant submits that allowing the United Kingdom to determine electoral eligibility by reference to whether or not an individual is resident in an existing constituency would permit the abolition of a large proportion of the present constituencies of the United Kingdom without, apparently, infringing Article 3 of the First Protocol. The applicant submits that such an interpretation of this provision would be manifestly absurd, and that his application should therefore be declared admissible.

THE LAW

The applicant complains that as a resident of Jersey he is unable to participate in elections to the United Kingdom Parliament notwithstanding that the latter has and exercises legislative jurisdiction over Jersey. He invokes Article 3 of the First Protocol, which 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 Commission observes first that amongst the conditions commonly imposed in Convention countries on their parliamentary elections are citizenship, residence and age. The Commission regards these requirements as conditions referred to in this provision, which provided they are not arbitrary, ensure the free expression of the people in the choice of the legislature.

The Commission has examined the requirement of residence in previous cases (e.g. Application No. 7730/76 X. v. the United Kingdom, D.R. 15, pp. 137 at 139), and has concluded in particular that a non-resident citizen may not be able to claim to be affected by the acts of the political bodies in respect of which he may be denied a vote when compared with a resident citizen. The direct, practical consequences of non-residence may therefore justify the denial of a vote to a non-resident who might otherwise *prima facie* fulfil the requirements of voting in an election, without infringing Article 3 of the First Protocol.

In the present case, the applicant is a British subject who is resident in Jersey. As such he is not resident in the United Kingdom, since although Jersey is a British territory, and is one of the British Islands, it does not form an integral and territorial part of the United Kingdom itself.

The Commission recalls that the sovereignty of the British Crown is recognised in respect of Jersey by virtue of Jersey forming part of the Duchy of Normandy, which is annexed to the Crown. Thus although the United Kingdom Parliament's legislative competence is constitutionally paramount, Jersey has its own elected legislature, the States, and legislation emanating from the United Kingdom Parliament is formally registered by the Jersey Royal Court.

As far as the States itself is concerned, it is a legislative body whose voting members are elected either by direct suffrage, in the case of senators and deputies, or by the parish assemblies in the case of constables. Senators are elected for a term of 6 years, half of them retiring every three years, and deputies are elected for a three year term. Thus elections are held at three yearly intervals, in which the conditions for voting include nationality (British or Irish), majority and ordinary residence in one of the parishes for which the members of the States are elected.

The applicant therefore has the right to vote in elections for the voting members of the States which do conform to the requirements of Article 3 First Protocol in as far as they provide opportunities for the free expression of the opinion of the people of Jersey at reasonable intervals by secret ballot.

As a result of the local competence of the States, which is a democratically elected body, to legislate on matters which are domestic to Jersey, which derives from the historical and constitutional relationship between Jersey and the United Kingdom, Jersey has never been an electoral constituency for the United Kingdom Parliament.

The specific constitutional status of Jersey has been recognised in the system of the European Convention on Human Rights because the Convention was formally extended to Jersey under Article 63 of the Convention. This reflects the fact that Jersey is treated as a territory for whose international

relations the United Kingdom is responsible but which does not, in itself, form part of the United Kingdom. It follows therefore that residents of Jersey, even if they are British subjects, are not *ipso facto* residents of the United Kingdom.

The applicant has contended that the United Kingdom Parliament's technical competence to legislate for Jersey, which is exercised rarely in practice but undoubtedly exists, results in Jersey residents being so directly affected by Acts of the United Kingdom Parliament that they are some of "the people" in respect of that legislature for the purposes of Article 3 First Protocol. He therefore maintains that residents of Jersey who otherwise fulfil voting requirements in the United Kingdom should be entitled to vote in its elections by virtue of Article 3 First Protocol.

The Commission considers that this contention must be seen in the light of the specific constitutional relationship between Jersey and the United Kingdom which was in existence before the United Kingdom became a party to the First Protocol to the Convention. Whereas the ratification of this provision might have involved the amendment of electoral practice in respect of established constituencies, the Commission finds that it could not have imposed an obligation on the United Kingdom to alter its long standing constitutional relationship with a territory outside the constitutional boundary of the United Kingdom, which was not at that time part of any existing constituency.

In particular the Commission notes that while the legislation relationship between the United Kingdom and Jersey is unusual, this is only an aspect of the exceptional constitutional relationship which has arisen for historical reasons long predating the Convention.

It follows that the applicant's complaint is manifestly ill-founded within the meaning of Article 27, paragraph 2 of the Convention.

For these reasons, the Commission

DECLARES THIS APPLICATION INADMISSIBLE.