

AS TO THE ADMISSIBILITY OF

Application No. 33689/96 by Mark ANDERSON and nine others against the United Kingdom

The European Commission of Human Rights sitting in private on  
27 October 1997, the following members being present:

Mr S. TRECHSEL, President

Mrs G.H. THUNE

Mrs J. LIDDY

MM E. BUSUTIL

G. JÖRUNDSSON

A. WEITZEL

J.-C. SOYER

H. DANELIUS

F. MARTINEZ

C.L. ROZAKIS

L. LOUCAIDES

M.P. PELLONPÄÄ

B. MARXER

M.A. NOWICKI

I. CABRAL BARRETO

B. CONFORTI

N. BRATZA

I. BÉKÉS

J. MUCHA

D. SVÁBY

G. RESS

A. PERENIC

C. BÎRSAN

P. LORENZEN

K. HERNDL

E. BIELIUNAS

E.A. ALKEMA

M. VILA AMIGÓ

Mrs M. HION

MM R. NICOLINI

A. ARABADJIEV

Mr M. de SALVIA, 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 13 May 1996 by  
Mark ANDERSON and nine others against the United Kingdom and registered  
on 7 November 1996 under file No. 33689/96;

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 applicants are British citizens. Their names and dates of birth are set out in the Annex to the present decision. They are represented by Mr. P. Leach, solicitor, of Liberty, London. The facts of the case, as submitted by the applicants' representative, may be summarised as follows.

The applicants are West Indian in origin and are black. At the material time they were all resident in Wellingborough, Northamptonshire.

CIN Properties Limited ("the Company") is a commercial property company which owns a 125 year lease of the Swansgate Shopping Centre ("the Centre") in Wellingborough. The freehold estate is owned by Wellingborough Borough Council. The lease was granted by Wellingborough Borough Council in 1980, backdated to run from 1 April 1975. According to the terms of the lease the Company is required:

"to allow full pedestrian access to the common parts of the demised premises from 7am to 11pm (or between such other hours as may be mutually agreed between the Council and the Lessee from time to time) daily throughout the year....in the event of excessive cost or vandalism the [Company] may make representation to the Council for a relaxation of this covenant...".

The Centre covers 40,000 square metres and occupies a large part (about three-fifths) of the town centre of Wellingborough. It has four pedestrian malls and a large central area which forms a focal point. The Centre contains Wellingborough's main shopping facilities, in addition to services such as the Electricity Showroom (where all of the applicants used to buy electricity cards), the Co-operative Bank (where the first applicant has an account) and various cafés.

On 3 April 1991 the Company, through its solicitors, wrote to each of the applicants to notify them that their licence to use the Centre had been terminated and that they were banned indefinitely from entering the Centre on the grounds of their alleged misconduct and disorderly behaviour. Each of the letters claimed that the applicants were: "frequently guilty of nuisance at the premises". The letters to each of the applicants terminated with the following passage:

"We hereby give you notice that you no longer have permission, express or implied, to enter the premises, or any part thereof, for any purpose whatsoever from the date hereof. Following receipt of this letter any entry to the premises by you will be a trespass and liable to civil action.

We would advise you that [the Company has] instructed us to apply to the Court for an injunction restraining you from entering the premises in any event. We will serve proceedings on you shortly."

On 29 April 1991 the Company brought proceedings in the High Court for an injunction to restrain the applicants from entering the Centre, on the grounds that the applicants' behaviour had caused a nuisance therein. On 29 October 1991 the applicants gave undertakings not to enter the Centre until trial or further order. The applicants defended the proceedings on the basis that they and all other members of the public had a right to enter the Centre, and that the purported revocation of the applicants' licence to enter the Centre was unlawful. In the affidavits of each of the applicants, save that of the ninth applicant which makes no mention of any charges, it is stated that pending charges in respect of disorderly behaviour had all been discharged by the magistrates.

On 29 November 1991 the applicants amended their defence in order to add a counterclaim. The counterclaim alleged that the Company was in breach of the provisions of the Race Relations Act 1968, discriminating against the applicants on grounds of race by refusing to allow them access to goods, facilities and services.

On 20 November 1992, by consent, the action in the High Court was transferred to Wellingborough County Court. The trial commenced in October 1993. However a few days after the beginning of the hearing, the judge, Mr Recorder Cox QC, ruled on various preliminary issues concerning the nature of the applicants' licence to enter the Centre and whether the Company could withdraw the licence and exclude the applicants from entering, by means of an injunction. Mr Recorder Cox held on 6 January 1994 that the public were not bare licensees whose rights to enter the Centre could be revoked at will by the Company. Rather the public had an irrevocable equitable right to enter and use the shopping malls within the Centre, whenever the doors of the Centre were open. However, the right of the public being an equitable one, the Company were able to demand reasonable conduct of members of the public, and on the suit of Company the court would have power to grant injunctions restraining the entry of certain individuals into the Centre who failed to comply with the condition of reasonable conduct.

The Company appealed against the decision of Mr Recorder Cox. On 1 February 1995, the Court of Appeal overruled the decision of Mr Recorder Cox, holding that the Company had the right, subject only to any issue under the Race Relations Act 1976, to determine any licence the applicants had to enter the Centre. The Court of Appeal rejected and overruled the holding of Mr Recorder Cox, that the public had an irrevocable equitable right to enter and use the shopping malls as long as they behaved reasonably. Having made this finding the Court of Appeal remitted the case to the Wellingborough County Court. On 15 November 1995 the House of Lords refused the applicants' petition for leave to appeal against the Court of Appeal's judgment.

## COMPLAINTS

The applicants complain that the withdrawal of their licence to enter the Centre for an indefinite duration constitutes a violation of their right to peaceful assembly under Article 11 of the Convention. They further complain that they were excluded from the Centre on grounds of their race and that they were racially abused by security guards, in violation of Article 14 of the Convention. The applicants claim that there is no effective domestic remedy in respect of the violation of Articles 11 and 14, in contravention of Article 13 of the Convention.

## THE LAW

1. The applicants complain that by being forbidden from entering the Centre, their right of peaceful assembly under Article 11 (Art. 11) of the Convention has been violated.

Article 11 (Art. 11) of the Convention provides as follows:

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The right to freedom of assembly is one of the foundations of a democratic society and should not be interpreted restrictively (No. 13079/87, Dec. 6.3.89, D.R. 60 p. 256, at p. 263). The right is applicable to private meetings and to meetings in public thoroughfares (No. 8191/78 Dec. 10.10.79, D.R. 17 p. 119), marches (No. 8440/78 Dec. 16.7.80, D.R. 21 p. 148) and sit-ins (No. 13079/87, Dec. 6.3.89, D.R. 60 p. 263). There is, however, no indication in the above case-law that freedom of assembly is intended to guarantee a right to pass and re-pass in public places, or to assemble for purely social purposes anywhere one wishes.

Freedom of association, too, has been described as a right for individuals to associate "in order to attain various ends" (No. 6094/73, Dec. 6.7.77, D.R. 9, p. 5, at p. 7; see also No. 8317/78, Dec. 15.5.80, D.R. 20, p. 44, at p. 98).

Moreover, the Commission notes that Protocol No. 4 to the Convention, Article 2 (P4-2) of which guarantees the right to liberty

of movement within the territory of a State, has not been ratified by the United Kingdom.

The Commission notes that the applicants had no history of using the Centre for any form of organised assembly or association.

The Commission thus finds no indication in the present case that the exclusion of the applicants from the Centre interfered with their rights under Article 11 (Art. 11) of the Convention.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants complain under Article 14 (Art. 14) that they were the subject of racial abuse by security guards at the Centre and were banned from the Centre on grounds of their race.

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."

To the extent that the complaint under Article 14 (Art. 14) relates to the complaint under Article 11 (Art. 11), the Commission notes that the essence of the applicants' complaint is that they were given no reasons for their exclusion from the centre. They cannot therefore complain that the reasons for their exclusion were discriminatory. In any event, as the Commission has found that the Article 11 (Art. 11) complaint is incompatible with that provision, it follows that the Article 14 (Art. 14) complaint, too, must be rejected (see Eur. Court HR, *Marckx v. Belgium* judgment of 13 June 1979, Series A no. 31, p. 23, para. 50).

To the extent that the Article 14 (Art. 14) complaint relates to the behaviour of the private security guards, and assuming that this complaint raises issues under the Convention, the Commission notes that an action under Section 20 of the Race Relations Act 1976 appears still to be pending, such that the applicants have not exhausted domestic remedies in this regard.

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

3. The applicants also complain under Article 13 (Art. 13), that they had no domestic remedy in relation to their exclusion from the centre.

Article 13 (Art. 13) provides so far as relevant:

"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 the guarantees of Article 13 (Art. 13) apply only to a grievance which can be regarded as "arguable" (cf. Eur. Court HR, Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 14, para. 31). In the present case, the Commission has rejected the substantive claims as disclosing no appearance of a violation of the Convention. For similar reasons, they cannot be regarded as "arguable".

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. de SALVIA	S. TRECHSEL
Secretary	President
to the Commission	of the Commission
A N N E X	

Name	Date of birth
Mark Junior ANDERSON	23 September 1967
Lesle Gabriel SEBASTIEN	8 November 1964
Roger McLEOD	9 February 1969
Adrian McLEOD	14 December 1972
Allan McCOURTIE	22 October 1969
Mark Anthony FREDERICK	10 December 1969
Jonathen Paul SHEPPEY	6 March 1973
Simon HENRY	16 November 1969
Wayne Winston LICORISH	24 June 1965
Andrew Jefferson SHEPPEY	8 February 1968