

AS TO THE ADMISSIBILITY

Application No. 12587/86
by A.R.M. CHAPPELL
against the United Kingdom

The European Commission of Human Rights sitting in private on
14 July 1987, the following members being present:

MM. C.A. NØRGAARD, President

J.A. FROWEIN

S. TRECHSEL

F. ERMACORA

E. BUSUTTIL

A.S. GÖZÜBÜYÜK

A. WEITZEL

J.C. SOYER

H.G. SCHERMERS

H. DANELIUS

G. BATLINER

H. VANDENBERGHE

Mrs. G.H. THUNE

Sir Basil HALL

MM. F. MARTINEZ

C.L. ROZAKIS

Mrs. J. LIDDY

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 23 June 1986
by A.R.M. CHAPPELL against the United Kingdom and registered on
27 November 1986 under file No. 12587/86;

Having regard to the report provided for in Rule 40 of the
Rules of Procedure of the Commission;

Having deliberated;
Decides as follows:

THE FACTS

The facts of the case as submitted by the first applicant may
be summarised as follows:

The first applicant is a British citizen born in 1948
residing in Somerset, England. He is the Brother Assistant Director
of Ceremonies for the Secular Order of Druids and is a Druid by

religion. He brings this matter before the Commission in his own right and as the authorised representative of the Secular Order of Druids ("the Druids"), the second applicant.

The application concerns the prevention of a Druidic religious ceremony at an ancient monument or temple known as Stonehenge. It is believed that for many thousands of years the religious group known, and recorded by the Romans, as the Druids performed a religious ceremony, the midsummer solstice, at the time of the rising of the sun on the longest day of the year at Stonehenge. It is thought by some that Stonehenge was built by the Druids over 4,500 years ago.

The first applicant states that in 1917 Stonehenge was gifted to the nation by a Druid, who in the deed of gift included a clause that it should always be open to the public. He states that for eighty years up until 1985 the religious ceremony known as the midsummer solstice took place without interference by any public or private body. In recent years the religious ceremony however attracted a large gathering of on-lookers which developed over successive years, into an event known as the Stonehenge free festival. This event was not sanctioned or encouraged by the Druids and formed no part of the Druids' ritual or ceremony.

In 1984 it was estimated that 30,000 people attended the Stonehenge free festival. The authorities entrusted with looking after Stonehenge and the surrounding area, the Historic Building and Monuments Commission for England and Wales ("English Heritage") and the National Trust, considered the festival to be fairly harmless in the early years, but by 1983 and 1984 there was a group of people known as "the peace convoy" who introduced an unruly element who were disruptive and disrespectful of the law. In 1985 various injunctions were granted for the protection of the property of the National Trust. As a result of the problems experienced by the National Trust, the Druids agreed not to hold their midsummer solstice ceremonies in 1985 on the understanding that further consultation take place in order to consider the basis on which solstice ceremonies might be held in subsequent years. The first applicant states that it was the Druids' understanding that after 1985 there would be a speedy resumption of those ceremonies for all the future years.

During the 1985 summer period there was a great deal of trouble between the police and members of the peace convoy. In consequence of these problems English Heritage in conjunction with the National Trust held meetings in the latter part of 1985 and early 1986 with many individuals and organisations interested in Stonehenge and the festival. The aim of these meetings was to attempt to find an alternative site for the festival and allow a limited celebration of the solstice by the Druids at Stonehenge. The first applicant states that he attended one such meeting and that it was chaotic due to the presence of members of the peace convoy who he claims were noisy and obstructive and prevented anything from being achieved.

English Heritage and the National Trust considered that there was no way in which an orderly solstice event could be held without an alternative festival site, which could not be found. The County Council and the Chief Constable supported this view and in the minutes of one of the meetings it is recorded that the Chief Constable stated that "in his experience the convoy was an unavoidable ingredient in the free festival circuit and that wherever they went, trouble occurred. Whilst sympathising with the genuine wishes of the Druids and others to hold solstice celebrations, he was fearful that whatever plans might be made to have an orderly event, the convoy would arrive and be influential and disruptive. If the stones (Stonehenge) were opened for the solstice he would be unable to take any action to stop the convoy".

In February 1986 the decision was made by English Heritage to close the Stonehenge site over the immediate period of the midsummer solstice. The relevant legislative provisions empowering English Heritage to take this step are found in the Ancient Monuments and Archaeological Areas Act 1979 and the National Heritage Act 1983.

Section 19 of the Ancient Monuments and Archaeological Areas Act 1979 provides, so far as is material, under subsection (1), that the public shall have access to any monument under the ownership or guardianship of the Secretary of State. Subsection (2) provides that the Secretary of State or, in certain circumstances, the local authority, may control the times of normal public access to a monument such as Stonehenge and " ... if they consider it necessary or expedient to do so in the interests of safety or for the maintenance or preservation of the monument, entirely exclude the public from access to any such monument or to any part of it, for such period as they think fit".

Subsection (3) provides that "The Secretary of State ... may by regulations ... regulate public access to any monument, or to all or any of the monuments, under [his] ownership or guardianship by virtue of this Act and any such regulations made by the Secretary of State may also apply to any monument, or to all or any of the monuments, under his control or management for any other reason".

Subsection (7) provides that "If any person contravenes or fails to comply with any provision of any regulations under this section, he shall be liable on ... conviction" to a financial penalty.

Regulations were made by the Secretary of State which included provisions prohibiting certain acts within the monument site and also, as in the case of Stonehenge, prohibiting certain acts within the monument site unless the prior consent in writing of the Secretary of State had been obtained. Such acts include the organising or taking part in any assembly, ceremony or ritual.

Under Section 34 of the National Heritage Act 1983, the Secretary of State has power to delegate his management functions, exercisable by him under the Ancient Monuments and Archaeological Areas Act, 1979 and such other legislation as is appropriate. The power was delegated to English Heritage.

These two Acts, combined with the Stonehenge Regulations 1983, allowed English Heritage to ban the Druids and the festival, and pursue criminal sanctions if the site was approached at the time of the midsummer solstice.

The first applicant on 14 May 1986 applied for leave to move for judicial review to compel the Secretary of State and/or the Commissioner of English Heritage to allow a Druidic religious ceremony at Stonehenge on the midsummer solstice day. This application, together with later appeals, was brought by the first applicant in his own right and as the authorised representative of the second applicant. The first applicant contended that the Druids had had a reasonable expectation of consultation with the Commissioner of English Heritage before the making of any decision, but that there had ultimately not been any or any sufficient consultation. The judge, however, found that the opportunity for consultation had been given more than once by the Commissioner and that the Commissioner could not be faulted for not offering further opportunities for consultation. The judge stated that "the Commissioners have done their best to accommodate the (Druids) in an attempt to see how the ancient ceremony could be continued if possible ... the Commissioners are gravely and seriously immersed by obstacles of allowing anyone, even the Druids as they stand at the moment to have access to Stonehenge for the summer solstice. I suspect that if they had been able to give their consent to the Druids without the risk of the sort of disturbance that has happened, they would have been glad to do so". The first applicant further argued that the celebrations of the summer solstice is of considerable importance to the Druids' religion and that to exclude the Druids from holding these celebrations infringes their rights under Article 9 of the European Convention on Human Rights which guarantees the right to freedom of religion.

The judge in the proceedings, however, concluded that the grounds for judicial review and consequential relief had not been made out and dismissed the application. In giving judgment Mr. Justice McNeill stated that he dealt with the case on the basis of the fundamental rights of individuals which included the right enshrined in Article 9 of the Convention, to which he referred. The judge noted the steps which had been taken by English Heritage in order to seek to accommodate the second applicant's desire to have access to Stonehenge for the solstice. He also took account of the difficulties which had arisen in previous years as a result of access by the general public to the monument and noted the second applicant's decision in 1985 to forgo the ceremony in view of the escalating problems experienced in previous years and the attendant risk to the monument and the

surrounding area. In view of these factors he concluded that the decision of English Heritage should not be quashed.

The first applicant appealed to the Court of Appeal which dismissed his application on 19 June 1986. In addition to the arguments raised before the High Court, the first applicant argued that limited access could have been granted by English Heritage to the Druids, and that entry to the site could have been controlled and limited by ticket to one hundred people. The first applicant states that at the very least one Druid could have been allowed to stand within the centre of the monument or temple at the rising of the sun for the purpose of reciting the necessary incantation to maintain the continuity of the beliefs of the Druid religion, practice and ceremony. The first applicant further stated that a petition had been signed by all the hippies of the convoy saying "please let the Druids perform their ceremony and if you do we promise not to cause trouble". The Court of Appeal however found that the decision to close Stonehenge at the time of the midsummer solstice was a decision that a reasonable body of persons could have come to and therefore dismissed the application for judicial review. Leave to appeal to the House of Lords was refused by the Court of Appeal and this refusal was confirmed by the Judicial Office of the House of Lords on 29 October 1986.

COMPLAINTS

The applicants complain that the decision to close Stonehenge and the surrounding area during the summer solstice and not to allow the Druids to practise the midsummer solstice ceremony infringes their right to freedom of religion as guaranteed by Article 9 of the Convention.

Additionally the applicants allege that their rights under Article 11 of the Convention have been infringed as they have not been allowed freedom of peaceful assembly or freedom of association with others.

The applicants further submit that there was no effective remedy available to them, contrary to Article 13 of the Convention.

The applicants, whilst basing their application on Articles 9, 11 and 13, do not exclude the applicability of any of the other provisions of the Convention.

THE LAW

1. The applicants complain that the decision to close Stonehenge and the surrounding area during the midsummer solstice and not to allow the Druids to practise the midsummer solstice ceremony infringes their freedom of religion as guaranteed by Article 9 (Art. 9) of the

Convention. Article 9 (Art. 9) of the Convention provides as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls with regard to the second applicant that a church body, or an association with religious and philosophical objects, is capable of possessing and exercising the rights contained in Article 9 (Art. 9) (No. 7805/77, Dec. 5.5.79, D.R. 16 p. 68 (70); No. 8118/77, Dec. 19.3.81, D.R. 25, 105 (117)).

The Commission has not found it necessary to decide whether or not Druidism can be classified as a religion within the meaning of Article 9 para. 1 (Art. 9-1). It has assumed, for the purpose of this application, that it is a religion or belief as it finds the complaint anyway manifestly ill-founded for the following reasons:

The Commission notes the applicants' submissions concerning the history of Stonehenge and the Druids' involvement in ceremonies over the years. Assuming druidism to be a religion, the Commission considers that the closing of Stonehenge and the surrounding area during the summer solstice period amounts to an interference with the applicants' rights under paragraph 1 of Article 9 (Art. 9-1) of the Convention. The next question to be determined, therefore, is whether that interference can be said to be justified under paragraph 2 of Article 9 (Art. 9) of the Convention.

The Commission first notes that the limitations placed on the applicants by the closing of the Stonehenge area and the prevention of the midsummer solstice ceremony were limitations prescribed by law under the Archaeological Areas Act 1979 and the National Heritage Act 1983. Secondly, it is clear from the information provided by the applicants, and in particular, from the transcripts of the courts' judgments, that the National Trust and English Heritage were faced with extreme problems concerning the festival and religious ceremonies taking place during the midsummer solstice. The applicants themselves acknowledged these great difficulties and agreed, in 1985, not to hold their midsummer solstice ceremony for that year. Attempts were made by the National Trust and English Heritage at the end of 1985 and beginning of 1986 to solve the problem of how the midsummer solstice

ceremonies might be held in future years. Various meetings were convened with individuals and organisations interested in Stonehenge. These meetings failed to provide a solution, and after consultations with the County Council and the Chief Constable, it was concluded that it would be dangerous to hold even a limited midsummer solstice celebration.

The Commission notes that the relevant authorities were under a duty to protect Stonehenge and the surrounding area and genuinely sought a solution for the holding of the midsummer solstice ceremony. However, in view of the geographical setting of Stonehenge and the absence of a suitable site in the vicinity where a festival could be held without threatening the monument and the risk of harm to the public through disruption, the authorities ultimately found that there was no practical alternative but to close the area. This decision reflected the unique historical and archaeological importance of Stonehenge. The Commission concludes that this decision was a necessary public safety measure, and that any implied interference with the applicants' rights under Article 9 para. 1 (Art. 9-1) of the Convention was in accordance with the law and necessary in a democratic society in the interests of public safety, for the protection of public order or for the protection of the rights and freedoms of others, within the meaning of Article 9 para. 2 (Art. 9-2) of the Convention.

This part of the application must therefore be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants further complain that their rights under Article 11 (Art. 11) of the Convention have been infringed as they have not been allowed freedom of peaceful assembly and freedom of association with others.

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."

However, for the reasons elaborated above in the context of Article 9 (Art. 9) of the Convention, the Commission finds that, even assuming there has been an interference with the applicants' rights under Article 11 para. 1 (Art. 11-1) of the Convention, interference was prescribed by law and necessary in a democratic society for the prevention of disorder or crime, or the protection of the rights and freedoms of others, within the meaning of Article 11 para. 2 (Art. 11-2) of the Convention. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicants further complain that they have been denied an effective remedy before a national authority in respect of their complaints, contrary to Article 13 (Art. 13) of the Convention.

Article 13 (Art. 13) of the Convention provides as follows:

"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 notes that the first applicant did apply to the High Court of Justice for an order to quash the decision of English Heritage to close Stonehenge over the summer solstice of 1986, and that he appealed to the Court of Appeal against the refusal to make such an order.

Mr. Justice McNeill in giving his judgment stated that he dealt with the case on the basis of the fundamental rights of individuals which included the right enshrined in Article 9 (Art. 9) of the Convention, which he quoted. He however concluded that while English Heritage had done its best to accommodate the second applicant, it could not be said having regard to the circumstances stated above that the closing was unreasonable and should be quashed. The Court of Appeal, having reviewed the troubles over access to Stonehenge over the summer solstices of 1984 and 1985 (in which year the Druids agreed not to hold their ceremonies) upheld the decision of Mr. Justice McNeill.

The first applicant was unsuccessful in these proceedings but the Commission finds that, on the facts of the present case and in the light of the judgments of the courts concerned, these proceedings provided a remedy before a national authority as required by Article 13 (Art. 13) of the Convention.

It follows that this aspect of the applicants' complaint is similarly manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The Commission notes that the applicants do not exclude the applicability of any of the other provisions of the Convention. The applicants have not, however, argued, or shown, how they consider any of the other provisions under the Convention might be in issue. The Commission therefore concludes that there are no further questions to be determined in this case.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)