

Application No. 7889/77

E. A. ARRONDELLE

against

the UNITED KINGDOM

REPORT OF THE COMMISSION

(Adopted on 13 May 1982)

75.632
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INTRODUCTION

This report relates to Application No. 7889/77 lodged against the United Kingdom by Mrs E. A. Arrondelle on 20 August 1976 under Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The applicant is represented by Mr N. C. Walsh of Messrs Fynmore & Walsh, a solicitor practising in Lewes.

On 15 July 1980 the European Commission of Human Rights declared the application admissible and proceeded to carry out its task under Art. 28 of the Convention which provides as follows:

"In the event of the Commission accepting a petition referred to it:

(a) it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;

(b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

The Commission found that the parties had reached a friendly settlement of the case and, during its session on 13 May 1982, it adopted this report which, in accordance with Art. 30 of the Convention, is confined to a brief statement of the facts and of the solution reached.

The following members of the Commission were present when the report was adopted:

C. A. NØRGAARD, President
J. A. FROWEIN
T. OPSAHL
G. JÖRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
M. MELCHIOR
J. A. CARRILLO
A. S. GOZUBUYUK
A. WEITZEL
J. C. SOYER

PART I

STATEMENT OF THE FACTS

1. The applicant, a citizen of the United Kingdom, resided at Horley in Surrey, England when lodging the application. Her home, Gable Cottage in Fernhill which she and her late husband, who died at the end of 1979, had purchased in 1960, was just over one mile from the east end of the runway of Gatwick airport. The eastern end of the runway was extended in 1969, while its western end was extended in 1973. The M23 motorway which was completed in 1975 is about 500 feet to the east of Gable Cottage.

The applicant's house, Gable Cottage, had been up for sale since 1969. In order to be able to sell her property at a reasonable price, the applicant made repeated applications to the Tandridge District Council for permission to change the use of the house to light industry or warehouses or offices on the land. These individual applications were refused as well as a planning application covering the whole area which had been submitted in 1973 by the residents. An appeal lodged by the applicant against the refusal of the second application was dismissed on 26 January 1978 by the Secretary of State for the Department of the Environment. The Department followed a recommendation submitted by an inspector who held the enquiry into the appeal. The inspector found that the applicant and her husband suffered intolerable stress by reason of the intensity, duration and frequency of noise primarily from low flying aircraft passing almost overhead. The applicant and her husband were so badly affected by the flight path that they were no longer able to enjoy the amenities of the house and garden. The inspector also considered that the conditions were worse than they had been in 1972, when a previous appeal had been dismissed, because of the development which had taken place at the airport, the marginal increase in aircraft movements and the building of the M23 motorway. Nevertheless, the inspector did not consider that the applicant and her husband's personal hardship justified permitting the proposed development as an exception to Tandridge District Council's general policy of restricting the development of land which is in an area subject to the policy applicable in the Metropolitan Green Belt.

The applicant also approached the competent authorities with a view to accepting a "Blight Notice" to purchase her property at the full market value. These efforts were to no avail.

In June 1978 the applicant received a grant for the insulation against noise of the kitchen/dining room, lounge and a first-floor bedroom in her house, Gable Cottage.

2. Before the Commission the applicant complained that she was in a grievous plight due to excessive aircraft noise and noise from the M23 motorway and alleged that her health was badly affected, as has been her late husband's health. The applicant also complained that due to the refusal of planning permission she was not able to sell her house at a reasonable price. On the other hand, such permission had been granted in another case. Finally, she complained that it was not possible to take her case through the civil courts as Sections 40 and 41 of the Civil Aviation Act 1949 prohibit actions for nuisance arising from civil aircraft in flight or on aerodromes.

The applicant invoked Arts. 6, 8 and 13 of the Convention and Art. 1 of the First Protocol, Arts. 8 of the Convention and 1 of the First Protocol also in conjunction with Art. 14 of the Convention.

3. The application was introduced with the Commission on 20 August 1976 and registered on 19 April 1977. On 4 December 1978 the Commission examined the question of its admissibility and decided, in accordance with Rule 42 (2)(b) of the Rules of Procedure, to invite the respondent Government to submit their written observations on its admissibility.

Both parties then submitted their observations on this question. The Commission considered the application on 6 May 1980 and decided to hold an oral hearing on the admissibility and merits of the case. The hearing was held on 15 July 1980 and on the same day the Commission declared the complaints summarised above admissible.

On 31 December 1980 applicant's counsel submitted that the applicant had received an offer for the purchase of Gable Cottage in the amount of £47,500. It was argued that the unblighted value of the property was £65,000 and the applicant claimed damages in the amount of £17,500 and additional costs. The respondent Government submitted observations in reply on 27 February 1981.

Finally a settlement of the case was reached, as described in Part II below.

PART II

SOLUTION REACHED

On 28 July 1980, following the decision on the admissibility of the application and its deliberations on the merits, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement in accordance with Art. 28 (b) of the Convention and invited the parties to submit any proposals they wished to make. However, no concrete proposals were forthcoming at that stage.

Following further submissions of the parties on the merits of the application and examination of the case by the Commission, a meeting took place in London on 22 September 1981 between representatives of the Commission, assisted by a member of the Secretariat, and the respondent Government's Agent, assisted by officials of the Department of the Environment and the Department of Trade, with a view to giving further consideration to the question of securing a friendly settlement of the matter. In pursuit of these discussions, the respondent Government informed the Commission that they were in principle prepared to reach a settlement of the case by making an ex gratia payment to the applicant. On 6 April 1982 the Commission's Secretary met the applicant and her counsel in Lewes, where the applicant expressed her readiness to declare the case settled on the basis of an ex gratia payment by the respondent Government. The Secretary informed the Government's Agent accordingly.

By letter of 21 April 1982 the respondent Government confirmed their agreement to the settlement in the following terms:

"The Government, without implying any admission of a violation of the Convention, would like to offer the applicant an ex gratia payment of £7,500 if she declares her application to be settled."

The applicant's lawyer was informed accordingly and declared, in a letter dated 7 May 1982 that "in view of the above offer by the United Kingdom Government the applicant declared her application No. 7889/77 to be settled."

The Commission at its session of 13 May 1982 found that the parties had come to an agreement regarding the terms of a settlement. It further found, having regard to Art. 28(b) of the Convention that a friendly settlement of the present application has been secured on the basis of respect for human rights as defined in the Convention.

For these reasons, the Commission adopts this Report.

Secretary to the Commission

President of the Commission

(H. C. KRUGER)

(C. A. NØRGAARD)