COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF A. v. THE UNITED KINGDOM

(Application no. 35373/97)

JUDGMENT

STRASBOURG

17 December 2002

FINAL

17/03/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of A. v. the United Kingdom,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Sir Nicolas BRATZA,
Mr GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 5 March and 3 December 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 35373/97) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission on Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on behalf of a United Kingdom national, Ms A. ("the applicant"), on 13 January 1997.

2. The applicant, who had been granted legal aid, was represented by Ms G. Ismail, of Liberty, London. The United Kingdom Government ("the Government") were represented by their Agent, Mr C. Whomersley, of the Foreign and Commonwealth Office, London. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged that the absolute parliamentary immunity which prevented her from taking legal action in respect of statements made about her in Parliament violated her right of access to a court under Article 6 § 1 of the Convention and her right to privacy under Article 8, as well as discriminating against her contrary to Article 14. She complained further under Article 6 § 1 about the unavailability of legal aid in defamation proceedings. She also relied on Article 13 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1).

6. On 1 November 2001, the Court changed the composition of its Sections (Rule 25 § 1). The case was assigned to the newly composed Second Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. The applicant and the Government each filed observations on admissibility and the merits (Rule 54 § 3).

8. A hearing on admissibility and the merits took place in public in the Human Rights Building, Strasbourg, on 5 March 2002 (Rule 54 § 4).

There appeared before the Court:

(a) *for the Government*

Mr	C. WHOMERSLEY, Foreign and Commonwealth Office,	*Agent*,
Mr	B. EMMERSON QC,	*Counsel*,
Mr	C. BIRD,	
Ms	E. SAMSON,	
Mr	J. VAUX,	
Ms	N. PITTAM,	
Mr	J. GRAINGER,	*Advisers*;

(b) *for the applicant*

Mr	A. NICOL QC,	*Counsel*,
Mr	A. HUDSON,	
Ms	G. ISMAIL,	*Advisers*.

The Court heard addresses by Mr Emmerson and Mr Nicol.

9. By a decision of 5 March 2002 the Chamber declared the application admissible.

10. The applicant and the Government each filed further observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*). In addition, third-party comments were received from the Austrian, Belgian, Netherlands, French, Finnish, Irish, Italian and Norwegian Governments, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicant is a United Kingdom national, born in 1971 and living in Bristol. She lives with her two children in a house owned by the local housing association, Solon Housing Association (SHA).

12. The SHA moved the applicant and her children to 50 Concorde Drive in 1994 following a report that she was suffering serious racial abuse at her then current address.

13. Concorde Drive is in the parliamentary constituency of Bristol North-West. On 17 July 1996, the member of Parliament (MP) for the Bristol North-West constituency, Mr Michael Stern, initiated a debate on the subject of municipal housing policy (and the SHA in particular) in the House of Commons. During the course of his speech, the MP referred specifically to the applicant several times, giving her name and address and referring to members of her family. He commented as follows:

> "The subject of anti-social behaviour by what newspapers frequently call 'neighbours from hell' has been a staple of social housing throughout the country for some time, and the government are, of course, in the process of taking steps to provide local authorities with the power to do something about such behaviour. Whether authorities such as Bristol will actually use the power is another matter.
>
> My reason for raising the subject of 50 Concorde Drive in my constituency and the behaviour of its shifting population is not just to draw attention to another example of neighbours from hell; it is also to note that housing practices by local authorities, which it appeared had been stamped out in the 1970s, are beginning to re-emerge in the voluntary housing movement. ...
>
> Solon Housing Association (South-West) Ltd purchased 50 Concorde Drive in my constituency in the early 1990s ... and in early 1994 it moved in as the new tenants [the applicant] and her two children, who are now aged three and six. Her brother, currently in prison, also gives 50 Concorde Drive as his permanent address. ...
>
> The Government's own Green Paper, 'Anti-Social Behaviour on Council Estates', published in April 1995, noted:
>
> 'Such behaviour manifests itself in many different ways and at varying levels of intensity. This can include vandalism, noise, verbal and physical abuse, threats of violence, racial harassment, damage to property, trespass, nuisance from dogs, car repairs on the street, joyriding, domestic violence, drugs and other criminal activities such as burglary.'
>
> Inevitably, the majority – if not all – of these activities have been forced on the neighbours of 50 Concorde Drive during the tenancy of that property and the garage further up the street that goes with it, by [the applicant], her children and their juvenile visitors, who seem strangely reluctant to attend school during normal hours, and even

more adult visitors who come to the house at all times of the day and night, frequently gaining entry by unorthodox means such as the bathroom window. Indeed, it is fair to say that there have been times when occupation of the house by the visitors has been more frequent than that of [the applicant].

So far as the garages grouped further along Concorde Drive are concerned – one of the garages automatically comes with the tenancy of No. 50 – complaints consist of numerous youths hanging around, vandalising cars, climbing on and damaging the garage roofs, under the apparent leadership, or at least the spirited concurrence of the [applicant's] family, adult and children, which makes improvement of those garages by other owners a complete waste of time. More seriously, arson inside the garage belonging to No. 50, and the regular destruction of its doors, have led other legitimate users of the garage to park their vehicles elsewhere for safety reasons.

But it is the conduct of [the applicant] and her circle which gives most cause for concern. Its impact on their immediate neighbours extends to perhaps a dozen houses on either side. Since the matter was first drawn to my attention in 1994, I have received reports of threats against other children; of fighting in the house, the garden and the street outside; of people coming and going 24 hours a day – in particular, a series of men late at night; of rubbish and stolen cars dumped nearby; of glass strewn in the road in the presence of [the applicant] and regular visitors; of alleged drug activity; and of all the other common regular annoyances to neighbours that are associated with a house of this type."

14. The applicant denies the truth of the majority of the allegations. The MP has never tried to communicate with her regarding the complaints made about her by her neighbours and has never attempted to verify the accuracy of his comments made in his speech either before or after the debate. Shortly before the debate, the MP issued a press release to several newspapers, including the Bristol-based *Evening Post* and the national *Daily Express*. The press release was subject to an embargo prohibiting disclosure until the precise time when the speech commenced. The contents of the press release were substantially the same as those of the MP's speech. The following day, both newspapers carried articles consisting of purported extracts of the speech, although these were based upon the press release. Both articles included photographs of the applicant and mentioned her name and address. The main headline in the *Evening Post* was:

"MP Attacks 'Neighbours From Hell' "

In the *Daily Express* the headline was:

"MP names nightmare neighbour"

15. The applicant was approached by journalists and television reporters asking for her response to the MP's allegations and her comments were summarised in each newspaper the same day, although they were not given as much prominence.

16. The applicant subsequently received hate mail addressed to her at 50 Concorde Drive. One letter stated that she should "be in houses with your own kind, not in amongst decent owners". Another letter stated:

> "You silly black bitch, I am just writing to let you know that if you do not stop your black nigger wogs nuisance, I will personally sort you and your smelly jungle bunny kids out."

17. The applicant was also stopped in the street, spat at and abused by strangers as "the neighbour from hell".

18. On 7 August 1996 a report was prepared for the SHA by a group which monitors racial harassment and attacks. The report found that "it has now come to the point where [the applicant] has been put in considerable danger as a result of her name being released to the public". The report recommended that the applicant be re-housed as a matter of urgency. She was re-housed in October 1996 and her children were obliged to change schools.

19. On 2 August 1996 the applicant wrote through her solicitors to the MP outlining her complaints and seeking his comments thereon. The letter was referred to the Office of the Parliamentary Speaker by the MP. The Speaker's representative replied to the MP on 12 August 1996 to the effect that the MP's remarks were protected by absolute parliamentary privilege:

> "Subject to the rules of order in debate, Members may state whatever they think fit in debate, however offensive it may be to the feelings or injurious to the character of individuals, and they are protected by this privilege from any action for libel, as well as from any other molestation."

This letter was copied and forwarded to the applicant's solicitors in September 1996.

20. Also on 2 August 1996, the applicant's solicitors wrote to the then Prime Minister, Mr John Major, asking that, as leader of the political party to which Mr Stern belonged, he investigate the applicant's complaints and take appropriate action. The Prime Minister's Office replied on 6 August 1996, stating that:

> "It is a matter for individual Members of Parliament to decide how they deal with their constituents and it is not for the Prime Minister to comment. There is a strict Parliamentary convention that Members of Parliament do not intervene in the affairs of other Members' constituencies and this applies equally to the Prime Minister."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Privilege

21. Words spoken by MPs in the course of debates in the House of Commons are protected by absolute privilege. This is provided by Article 9 of the Bill of Rights 1689, which states:

> "... the freedome of speech and debates or proceedings in Parlyament ought not to be impeached or questioned in a court or place out of Parlyament."

22. The effect of this privilege was described by Lord Chief Justice Cockburn in *Ex parte Watson* (1869) Queen's Bench Reports 573 at 576:

> "It is clear that statements made by Members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third party."

23. Statements made by MPs outside the Houses of Parliament are subject to the ordinary laws of defamation and breach of confidence, save where they are protected by qualified privilege.

24. The question whether or not qualified privilege applies to statements made in any given political context turns upon the public interest. In *Reynolds v. Times Newspapers Ltd* [2001] 2 Appeal Cases 127, which concerned allegations made in the British press about an Irish political crisis in 1994, Lord Nicholls of Birkenhead stated in the House of Lords, at page 204:

> "The common law should not develop 'political information' as a new 'subject matter' category of qualified privilege, whereby the publication of all such information would attract qualified privilege, whatever the circumstances. That would not provide adequate protection for reputation. Moreover, it would be unsound in principle to distinguish political discussion from discussion of other matters of serious political concern. The elasticity of the common law principle enables interference with freedom of speech to be confined to what is necessary in the circumstances of the case. This elasticity enables the court to give appropriate weight, in today's conditions, to the importance of freedom of expression by the media on all matters of public concern.
>
> Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only. 1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. 2. The nature of the information, and the extent to which the subject matter is a matter of public concern. 3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories. 4. The steps taken to verify the information. 5. The status of the information. The allegations may have already been the subject of an investigation which commands respect. 6. The urgency of the matter. News is often a perishable commodity. 7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. 8. Whether the article contained the gist of the plaintiff's side of the story. 9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact. 10. The circumstances of the publication, including the timing."

25. Press coverage, to the extent that it fairly and accurately reports parliamentary debates, is generally protected by a form of qualified privilege which is lost only if the publisher has acted "maliciously". "Malice", for this purpose, is established where the report concerned is published for improper motives or with "reckless indifference" to the truth. A failure to make proper enquiries is not sufficient in itself to establish

malice, but it may be evidence from which malice (in the sense of reckless indifference to the truth) can reasonably be inferred.

26. MPs can waive the absolute immunity which they enjoy in Parliament as a result of section 13 of the Defamation Act 1996, which provides:

> "(1) Where the conduct of a person in or in relation to proceedings in Parliament is in issue in defamation proceedings, he may waive for the purposes of those proceedings, so far as concerns him, the protection of any enactment or rule of law which prevents proceedings in Parliament being impeached or questioned in any court or place out of Parliament.
>
> (2) Where a person waives that protection –
>
> (a) any such enactment or rule of law shall not apply to prevent evidence being given, questions being asked or statements, submissions, comments or findings being made about his conduct, and
>
> (b) none of those things shall be regarded as infringing the privilege of either House of Parliament.
>
> (3) The waiver by one person of that protection does not affect its operation in relation to another person who has not waived it.
>
> (4) Nothing in this section affects any enactment or rule of law so far as it protects a person (including a person who has waived the protection referred to above) from legal liability for words spoken or things done in the course of, or for the purposes of or incidental to, any proceedings in Parliament."

27. General control is exercised over debates by the Speaker of each House of Parliament. Each House has its own mechanisms for disciplining members who deliberately make false statements in the course of debates. Deliberately misleading statements are punishable by Parliament as a contempt. Alternatively, as the Parliamentary Select Committee on Procedure (1988-89) has observed:

> "... there already exists a wide range of avenues which can be pursued by an aggrieved person who wishes to correct or rebut remarks made about him in the House. He can approach his Member of Parliament with a view to his tabling an Early Day Motion, or an amendment where appropriate; there may be cases which can be raised through Questions if some ministerial responsibility can be established; he can petition the House, through a Member; and he can approach directly the Member who made the allegations in the hope of persuading him that they are unfounded and that a retraction would be justified. We believe that in these circumstances, the House would not expect a rigid adherence to the convention that one Member does not take up a case brought by the constituent of another, particularly if the latter was the source of the statement complained of, and so long as the courtesies of proper notification were observed."

B. Legal aid, "Green Form" assistance and conditional fees

28. Under Schedule 2, Part II of the Legal Aid Act 1988, "[p]roceedings wholly or partly in respect of defamation" are excepted from the scope of the civil legal aid scheme.

29. "Green Form" assistance is available to potential litigants with insufficient means in order to allow them to receive two hours' free legal advice from a solicitor in cases of alleged defamation. The time can be extended upon application.

30. Under section 58 of the Courts and Legal Services Act 1990, solicitors may enter into conditional fee agreements in respect of any type of proceedings specified in an Order made by the Lord Chancellor. A conditional fee agreement is defined under that section as an agreement in writing between a solicitor and his client which provides that the solicitor's fees and expenses, or any part of them, are to be payable only in specified circumstances. The Conditional Fee Agreements Order 1998 (Statutory Instrument 1860 of 1998) permitted conditional fee agreements in relation to "all proceedings". The Order entered into force on 30 July 1998. A conditional fee agreement cannot prevent an unsuccessful litigant from being potentially liable to pay all or part of his opponent's costs in connection with the proceedings.

C. Limitation period

31. The limitation period applicable to defamation proceedings in respect of statements made in July 1996 was three years pursuant to section 4A of the Limitation Act 1980, as inserted by section 57(2) of the Administration of Justice Act 1985.

D. Report of the Joint Committee on Parliamentary Privilege

32. A joint committee of both Houses of Parliament was set up in July 1997 and tasked with reviewing the law of parliamentary privilege. The committee received written and oral evidence from a wide variety of sources from within the United Kingdom and abroad and held fourteen sessions of evidence in public. Its report was published in March 1999. Chapter 2 sets out its conclusions on parliamentary immunity:

> "38. The immunity is wide. Statements made in Parliament may not even be used to support a cause of action arising out of Parliament, as where a plaintiff suing a member for an alleged libel on television was not permitted to rely on statements made by the member in the House of Commons as proof of malice. The immunity is also absolute: it is not excluded by the presence of malice or fraudulent purpose. Article 9 protects the member who knows what he is saying is untrue as much as the

member who acts honestly and responsibly. ... In more precise legal language, it protects a person from legal liability for words spoken or things done in the course of, or for the purposes of or incidental to, any proceedings in Parliament.

39. A comparable principle exists in court proceedings. Statements made by a judge or advocate or witness in the course of court proceedings enjoy absolute privilege at common law against claims for defamation. The rationale in the two cases is the same. The public interest in the freedom of speech in the proceedings, whether parliamentary or judicial, is of a high order. It is not to be imperilled by the prospect of subsequent inquiry into the state of mind of those who participate in the proceedings even though the price is that a person may be defamed unjustly and left without a remedy.

40. It follows that we do not agree with those who have suggested that members of Parliament do not need any greater protection against civil actions than the qualified privilege enjoyed by members of elected bodies in local government. Unlike members of Parliament, local councillors are liable in defamation if they speak maliciously. We consider it of utmost importance that there should be a national public forum where all manner of persons, irrespective of their power or wealth, can be criticised. Members should not be exposed to the risk of being brought before the courts to defend what they said in Parliament. Abuse of parliamentary freedom of speech is a matter for internal self-regulation by Parliament, not a matter for investigation and regulation by the courts. The legal immunity principle is as important today as ever. The courts have a duty not to erode this essential constitutional principle."

III. THE COUNCIL OF EUROPE AND THE EUROPEAN UNION

33. Article 40 of the Statute of the Council of Europe provides:

"(a) The Council of Europe, representatives of members and the Secretariat shall enjoy in the territories of its members such privileges and immunities as are reasonably necessary for the fulfilment of their functions. These immunities shall include immunity for all representatives to the Parliamentary Assembly from arrest and all legal proceedings in the territories of all members, in respect of words spoken and votes cast in the debates of the Assembly or its committees or commissions.

(b) The members undertake as soon as possible to enter into agreement for the purpose of fulfilling the provisions of paragraph (a) above. For this purpose the Committee of Ministers shall recommend to the governments of members the acceptance of an agreement defining the privileges and immunities to be granted in the territories of all members. In addition, a special agreement shall be concluded with the Government of the French Republic defining the privileges and immunities which the Council shall enjoy at its seat."

34. In pursuance of paragraph (b) above, the member States, on 2 September 1949, entered into the General Agreement on Privileges and Immunities of the Council of Europe. This provides, in its relevant parts, as follows:

"**Article 14**

Representatives to the Parliamentary Assembly and their substitutes shall be immune from all official interrogation and from arrest and from all legal proceedings in respect of words spoken or votes cast by them in the exercise of their functions.

Article 15

During the sessions of the Parliamentary Assembly, the Representatives to the Assembly and their substitutes, whether they be members of Parliament or not, shall enjoy:

(a) on their national territory, the immunities accorded in those countries to members of Parliament;

(b) on the territory of all other member States, exemption from arrest and prosecution. ..."

35. Article 5 of the Protocol to the General Agreement on Privileges and Immunities of the Council of Europe provides:

"Privileges, immunities and facilities are accorded to the representatives of members not for the personal benefit of the individuals concerned, but in order to safeguard the independent exercise of their functions in connection with the Council of Europe. Consequently, a member has not only the right but the duty to waive the immunity of its representative in any case where, in the opinion of the member, the immunity would impede the course of justice and it can be waived without prejudice to the purpose for which the immunity is accorded."

36. Article 9 of the Protocol on the Privileges and Immunities of the European Communities, adopted in accordance with Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities, provides:

"Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties."

IV. THIRD-PARTY INTERVENTIONS

A. The Austrian Government

37. Under Article 57 § 1 of the Federal Constitutional Law members of the *Nationalrat* (the lower house of Parliament) may never be held liable for votes cast in the exercise of their functions or on the ground of oral or written statements made in the course of their functions – so-called "professional immunity". In these matters, members enjoy immunity from criminal, civil and administrative proceedings. The President however may

require a member to keep to the subject or call the member to order if he/she violates the decency and dignity of the House or makes defamatory statements (section 102 of the Standing Orders Act).

38. Under Article 57 § 3, criminal or civil proceedings against an MP may be taken without the consent of the *Nationalrat* only where they are "manifestly not connected with the political activity of the member in question" – so-called "non-professional immunity". MPs may therefore be subject to civil proceedings, the issue of whether the matter has manifestly no connection with their duties being determined by the prosecuting authorities. Where the authority considers that that connection is manifest or unclear, it must seek the consent of the *Nationalrat*. Where the MP concerned or one-third of the members of the Immunity Committee require it, consent must also be asked of the *Nationalrat*. According to the prevailing view, this level of immunity merely prevents legal action for a limited period of time, proceedings becoming possible once the MP loses his/her immunity status.

39. The Austrian Government emphasised that these provisions had strong historical roots in the national legal system, serving to guarantee the protection of MPs in their political activity, in particular their freedom to vote and state their views.

B. The Belgian Government

40. Articles 58 and 59 of the Belgian Constitution prohibit proceedings against a member of either Federal Chamber of Parliament concerning the expression of opinion or votes cast. Save in the case of *flagrant délit*, no member of a Chamber may be summoned before a court or arrested during a parliamentary session unless the Chamber has given consent. This immunity, even against acts infringing the rights of citizens, is regarded in domestic law and practice as an essential guarantee for the functioning of the legislature and its absolute nature as essential to the efficacy of that guarantee. Private rights have to be regarded as ceding to the overriding public interest.

C. The Netherlands Government

41. The Netherlands Government drew attention to Article 71 of the Netherlands Constitution, which confers upon members of the Senate and House of Representatives of the States General an immunity from every category of legal proceedings.

42. They pointed out that the right to parliamentary immunity in the Netherlands is not absolute. The Rules of Procedure of both the Senate and the House of Representatives cover cases in which an MP abuses the protection afforded by Article 71. The President in each Chamber may

admonish any member who violates the Rules of Procedure and then offer the member concerned a chance to retract the offending remark. If the member refuses to make a retraction, or persists in violating the Rules of Procedure, the President may forbid him or her from speaking further or from attending the rest of the sitting or further sittings the same day. Similar immunities and disciplinary procedures apply at the provincial and municipal level.

43. The Netherlands Government submitted that parliamentary immunity is indispensable to the operation of democracy and that to give the judiciary authority over what MPs say in their deliberations would represent an unacceptable infringement of the separation of powers.

D. The Finnish Government

44. According to section 30(1) of the Constitution (1999), an MP shall not be prevented from carrying out his or her duties as a representative. Section 30(2) provides that an MP cannot be charged in a court of law or be deprived of liberty owing to opinions expressed by the representative in Parliament or owing to conduct in the consideration of a matter, unless Parliament gives consent by a majority of five-sixths of the votes cast. The provisions concerning parliamentary privilege and immunities have a long tradition in the work of Parliament, dating back to 1723. The only restriction on the exercise of the freedom of expression of a representative is the requirement in section 31(2) that a representative conduct himself or herself with decorum and not act offensively towards another person. If a representative breaches this condition, the Speaker may issue a warning or prohibit the representative from continuing to talk. Parliament may caution a representative who has repeatedly breached the order or suspend him or her for a maximum of two weeks.

45. A waiver of immunity may be requested by any person having the right to prosecute or to request prosecution. The Speaker examines whether the party has such a right and whether the intended prosecution concerns the MP's official actions. Parliament decides on such a request in ordinary session and the decisive question is whether the intended prosecution is of such a nature that there is a public or private interest to refer the matter to a court of law. In most cases, Parliament has deemed such requests manifestly ill-founded and rejected them. In no case based on alleged damage to another person's reputation or allegedly incorrect information given by an MP has a prosecution been authorised.

46. The Finnish Government considered that freedom of speech and the general freedom to act were essential for the performance of the duties of an MP.

E. The French Government

47. The provisions in the French system which protect the representatives of the people in the performance of their duties date back to 1789, deriving from respect for the expression of the will of the people and the necessity in a democratic State for elected representatives to exercise their mandate freely without fear of legal action or interference from either the executive or the judiciary. The immunity bestowed is absolute in that it covers all acts carried out by MPs in the exercise of their functions regarding criminal and civil liability and permanent since it continues after expiry of their mandates. The immunity is not concerned with the private interests of the MP but with the function that he or she exercises. Thus, it cannot be waived by an individual MP.

48. However, the immunity conferred is strictly interpreted and does not extend to acts outside the exercise of the MP's mandate, including speech in a private capacity within the Assembly or statements in press articles even where these merely repeat statements made during an Assembly debate. Parliamentary immunity carries with it a requirement of discretion (*devoir de réserve*) and unacceptable forms of expression may be subject to internal admonition.

F. The Irish Government

49. The Irish Government submitted that parliamentary immunity has developed throughout the world not as a constraint upon the rights of the citizen, but as a fundamental liberty. They argued that a cursory consideration of the history of the principle, its widespread domestic and international constitutional entrenchment and the case-law of the Court all suggest that parliamentary immunity is protected by the Convention. They supported this argument by reference to the preamble to the Convention.

50. The Irish Government pointed to, *inter alia*, Articles 15.10 and 15.13 of the 1937 Constitution of Ireland, which provide:

> "[15.10] Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate ...
>
> [15.13] The Members of each House of the Oireachtas [Parliament] ... shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself."

51. Article 40.3.2 of the Constitution expressly recognises, and imposes upon the State, an obligation to defend and vindicate the citizen's right to his or her good name. However, the Irish Government indicated that there is no

absolute right to reputation or protection from defamatory utterances under Irish law.

52. They drew attention also to the privileges and immunities enjoyed by representatives to the Parliamentary Assembly of the Council of Europe and members of the European Parliament (see paragraphs 33-36 above). They submitted that it was difficult to see how such immunities could be consistent with the Convention if the conferring by individual States of similar immunities in respect of their own Parliaments itself violated the Convention.

53. The Irish Government argued that the importance of the legitimate objectives pursued by parliamentary immunity was difficult to overstate and that it was for the national authorities to seek to balance the right of individual citizens to a good name with the right of free parliamentary expression. In reviewing the proportionality of the balance struck, they said that the Court must have regard to the fact that States were in principle better placed than an international court to evaluate local needs and conditions.

G. The Italian Government

54. The Italian Government pointed out that parliamentary privilege is recognised by a large number of democratic countries across Europe and the rest of the world, including Italy, together with international bodies such as the Council of Europe and the European Union. They submitted that such a privilege is a fundamental aspect of the separation of powers and the rule of law, both of which are political traditions upon which the Convention and the Council of Europe were founded.

55. They stated that, notwithstanding a recent revision in Italy of the rules of parliamentary privileges and immunities, the protection of free speech in Parliament against interference by the courts has never been questioned there and continues to be considered essential to parliamentary government. In the event of any dispute between Parliament and the judiciary as to the application of a privilege, it is a "neutral" authority, in the form of the Italian Constitutional Court, which has the final decision. That court is made up of fifteen judges, five of whom are appointed by Parliament, five by the supreme courts and five by the President of the Republic.

56. The Italian Government submitted that parliamentary privilege pursues its legitimate aim in a proportionate manner, particularly since its scope is limited to parliamentary activity. They argued that MPs would not be able to speak their mind freely in Parliament in the absence of an absolute immunity.

H. The Norwegian Government

57. There is no general provision granting members of Parliament (*Storting*) immunity from judicial processes. However, Article 66 of the Constitution confers immunity in two limited situations. Members cannot be arrested on the way to or from Parliament (unless apprehended in "public crimes") and cannot be called to account outside the meetings of Parliament for opinions expressed there. This immunity comprises both criminal and civil liability, and extends even to speech where it is alleged that the member has intentionally expressed untruths or where the member has expressed himself or herself on a subject unconnected with the issue under debate. An individual member cannot waive the immunity. The absolute nature of the immunity is regarded as necessary to prevent undermining the general purpose of the provision, which is to guarantee the unfettered exchange of information and ideas in Parliament, being considered indispensable in the Norwegian democratic system.

58. However, a member may be held accountable within Parliament, improper or insulting behaviour being prohibited and subject to the potential sanction of a warning from the President or exclusion by Parliament from the right to speak or participate in the proceedings for the rest of the day.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

A. Parliamentary privilege

59. The applicant complained that the absolute nature of the privilege which protected the MP's statements about her in Parliament violated her right of access to a court under Article 6 § 1 of the Convention.

The relevant part of Article 6 § 1 provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

1. Applicability of Article 6 § 1

60. The Government argued that the substantive content of the civil right to reputation in domestic law was delimited by the rules of parliamentary privilege, and that a person whose reputation was damaged by a parliamentary speech therefore had no actionable claim so as to engage the procedural safeguards of Article 6 § 1 of the Convention.

61. The applicant argued that the absolute immunity which MPs enjoy from legal action in respect of words spoken in parliamentary proceedings was an aspect of procedural law which fell within the scope of Article 6 § 1.

62. The Court notes that in *Agee v. the United Kingdom* (no. 7729/76, Commission decision of 17 December 1976, Decisions and Reports (DR) 7, p. 164) the Commission considered that the applicant did not have any right under United Kingdom law to the protection of his reputation in so far as it might be affected by statements made in Parliament. As a result, it stated that Article 6 § 1 did not guarantee a right to bring defamation proceedings in respect of such statements and concluded that the applicant's complaint about his inability to do so was incompatible *ratione materiae* with the Convention.

63. However, the Court has subsequently established that whether a person has an actionable domestic claim so as to engage Article 6 § 1 may depend not only on the substantive content of the relevant civil right, as defined under national law, but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court. In the latter kind of case, Article 6 § 1 may be applicable. Certainly the Convention enforcement bodies may not create by way of interpretation of Article 6 § 1 a substantive civil right which has no legal basis in the State concerned. However, it would not be consistent with the rule of law in a democratic society, or with the basic principle underlying Article 6 § 1 – namely that civil claims must be capable of being submitted to a judge for adjudication – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons (see *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, § 65, and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 47, ECHR 2001-XI).

64. In the present case, the Court observes that Article 9 of the Bill of Rights is framed not in terms of a substantive defence to civil claims, but rather in terms of a procedural bar to the determination by a court of any claim which derives from words spoken in Parliament.

65. However, the Court considers it unnecessary to settle the precise nature of the privilege at issue for the purposes of Article 6 § 1, since it is devoid of significance in the particular circumstances. This is because the

central issues of legitimate aim and proportionality which arise under the applicant's procedural complaint under Article 6 § 1 of the Convention are the same as those arising in relation to the applicant's substantive complaint connected to the right to respect for private life under Article 8 (see *Fayed*, cited above, pp. 50-51, § 67).

The Court will therefore proceed on the basis that Article 6 § 1 is applicable to the facts of this case.

2. Compliance with Article 6 § 1

66. The Government regarded it as a fundamental constitutional principle that statements made in Parliament should be protected by absolute privilege. They stated that such a privilege served the dual public interests of free speech in Parliament and the separation of powers. They indicated that such legitimate aims were of sufficient importance to outweigh any harm to the rights of individuals which might result from words spoken in Parliament. Absolute privilege was designed not to protect individual members, but Parliament as a whole, and operated only where it was strictly necessary, namely within Parliament itself. They drew attention also to the fact that Parliament had its own internal mechanisms for disciplining an MP who deliberately made a false statement during a debate.

67. The Government submitted that all Contracting States to the Convention, together with most other democracies, have some system of parliamentary immunity, although the precise features of such systems vary, showing that it was a virtually universal principle. They referred also to the immunity enjoyed by members of various international institutions, including the Parliamentary Assembly of the Council of Europe and the European Parliament (see paragraphs 33-36 above).

68. The Government highlighted the conclusions reached by the recent review of parliamentary privilege by a joint committee of the House of Commons and House of Lords in support of retaining the rule of absolute parliamentary immunity (see paragraph 32 above).

69. In all the circumstances, the Government argued that the rule of absolute parliamentary immunity was justified in principle in the public interest. They maintained that, once such a justification was recognised, there was no basis for distinguishing between the facts of individual cases.

70. The Government contrasted the absolute immunity enjoyed by MPs in Parliament with the qualified immunity enjoyed by the press when reporting parliamentary proceedings. They indicated that the public interest in free reporting of such proceedings was not considered strong enough to justify absolute privilege, and so the domestic law had qualified the privilege by requiring the publisher to report in a “fair and accurate” manner and without improper motive.

71. The applicant argued that Article 9 of the Bill of Rights left her unable to bring domestic proceedings in respect of both the defamatory and

the true elements of the MP's parliamentary speech. She highlighted the fact that, under the Defamation Act 1996, MPs could effectively waive Parliamentary immunity where it suited them to do so by having evidence relating to statements made in Parliament admitted to court in litigation which they had initiated. Although she accepted that parliamentary privilege pursued the legitimate aims of free debate and regulation of the relationship between the legislature and the judiciary, she submitted that it did so in a disproportionate manner. She contended that the broader an immunity, the more compelling must be its justification, and that an absolute immunity such as that enjoyed by MPs must be subjected to the most rigorous scrutiny. Thus, she argued that the proportionality of the immunity could only be determined in the light of the facts of her case. She drew attention to the severity of the allegations made in the MP's speech and his repeated reference to the applicant's name and address, both of which she claimed were unnecessary in the context of a debate about municipal housing policy. She also pointed to the consequences of the allegations for both her and her children, which she said were utterly predictable. The Government had failed convincingly to establish why a lesser form of protection than absolute privilege could not meet the needs of a democratic society, in particular why it is necessary to protect those MPs who on rare occasion speak maliciously, making gravely damaging statements.

72. The applicant submitted that the parliamentary avenues of redress identified by the Government did not offer access to an independent court and failed to provide her with any effective remedy. She contrasted the position in Parliament with that in other democratic institutions in the United Kingdom such as local councils, where only qualified privilege applied. She argued that the parallel drawn between national parliaments and international bodies such as the Council of Europe was inexact. As regards the position in Europe generally, she noted that in many countries immunity could be lifted or did not extend to defamatory remarks or insults. In her view, freedom of speech in Parliament must, as in the local government and other contexts, carry with it duties and responsibilities, as confirmed by Article 10 § 2 of the Convention.

73. The Court reiterates that the right of access to a court constitutes an element which is inherent in the right to a fair hearing under Article 6 § 1 of the Convention (see, among other authorities, *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36).

74. However, the right of access to a court is not absolute, but may be subject to limitations. These are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent

that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).

75. The Court must first examine whether the limitation pursued a legitimate aim. It notes in this connection that in *Young v. Ireland* (no. 25646/94, Commission decision of 17 January 1996, DR 84-A, p. 122) the Commission identified an underlying aim of the immunity accorded to members of the lower house of the Irish legislature as being to allow such members to engage in meaningful debate and to represent their constituents on matters of public interest without having to restrict their observations or edit their opinions because of the danger of being amenable to a court or other such authority.

76. The Court notes that the applicant recognises that aim in connection with the operation of parliamentary immunity in the United Kingdom. She recognises also that the immunity pursues a second legitimate aim, namely that of regulating the relationship between the legislature and the judiciary.

77. The Court concludes that the parliamentary immunity enjoyed by the MP in the present case pursued the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary.

78. The Court must next assess the proportionality of the immunity enjoyed by the MP. In this regard, the Court notes that the immunity concerned was absolute in nature and applied to both criminal and civil proceedings. The Court agrees with the applicant's submission that the broader an immunity, the more compelling must be its justification in order that it can be said to be compatible with the Convention. However, it reiterates its analysis in *Fayed* (cited above, pp. 53-54, § 77), as followed by the Commission in *Young*, to the effect that, when examining the proportionality of an immunity, its absolute nature cannot be decisive. Thus, for example, in *Al-Adsani*, cited above, the Court stated that measures taken by signatory States which reflected generally recognised rules of public international law on State immunity could not in principle be regarded as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1 (see also *Fogarty v. the United Kingdom* [GC], no. 37112/97, § 36, ECHR 2001-XI, and *McElhinney v. Ireland* [GC], no. 31253/96, § 37, ECHR 2001-XI).

79. It is also noted that recently, in *Jerusalem v. Austria* (no. 26958/95, §§ 36 and 40, ECHR 2001-II), the Court stated that, while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to their preoccupations and defends their interests. In a democracy,

Parliament or such comparable bodies are the essential fora for political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein.

80. The Court notes that most, if not all, signatory States to the Convention have in place some form of immunity for members of their national legislatures. In particular, the domestic law of each of the eight States to have made a third-party intervention in the present case makes provision for such an immunity (see paragraphs 37-58 above), although the precise detail of the immunities concerned varies.

81. Measures are also in place granting privileges and immunities to, *inter alios*, representatives to the Parliamentary Assembly of the Council of Europe and members of the European Parliament (see paragraphs 33-36 above).

82. The Court observes the conclusions reached by the joint committee of both Houses of Parliament in its report of March 1999 following its review of parliamentary privilege in the United Kingdom (see paragraph 32 above). In particular, it notes the reasons given at paragraph 40 of the report in support of the retention by members of the national Parliament of the protection afforded by absolute immunity, in contrast to the qualified immunity enjoyed by members of local government bodies.

83. In light of the above, the Court believes that a rule of parliamentary immunity, which is consistent with and reflects generally recognised rules within signatory States, the Council of Europe and the European Union, cannot in principle be regarded as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1 (see, *mutatis mutandis*, *Al-Adsani*, cited above, § 56). Just as the right of access to a court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by signatory States as part of the doctrine of parliamentary immunity (ibid.).

84. Furthermore, the immunity afforded to MPs in the United Kingdom appears to the Court to be in several respects narrower than that afforded to members of national legislatures in certain other signatory States and those afforded to representatives to the Parliamentary Assembly of the Council of Europe and members of the European Parliament. In particular, the immunity attaches only to statements made in the course of parliamentary debates on the floor of the House of Commons or House of Lords. No immunity attaches to statements made outside Parliament, even if they amount to a repetition of statements made during the course of Parliamentary debates on matters of public interest. Nor does any immunity attach to an MP's press statements published prior to parliamentary debates, even if their contents are repeated subsequently in the debate itself.

85. The absolute immunity enjoyed by MPs is moreover designed to protect the interests of Parliament as a whole as opposed to those of

individual MPs. This is illustrated by the fact that the immunity does not apply outside Parliament. In contrast, the immunity which protects those engaged in the reporting of parliamentary proceedings, and that enjoyed by elected representatives in local government, are each qualified in nature.

86. The Court observes that victims of defamatory misstatement in Parliament are not entirely without means of redress (see paragraph 27 above). In particular, such persons can, where it is their own MP who has made the offending remarks, petition the House through any other MP with a view to securing a retraction. In extreme cases, deliberately misleading statements may be punishable by Parliament as a contempt. General control is exercised over debates by the Speaker of each House. The Court considers that all of these factors are of relevance to the question of proportionality of the immunity enjoyed by the MP in the present case.

87. It follows that, in all the circumstances of this case, the application of a rule of absolute Parliamentary immunity cannot be said to exceed the margin of appreciation allowed to States in limiting an individual's right of access to a court.

88. The Court agrees with the applicant's submissions to the effect that the allegations made about her in the MP's speech were extremely serious and clearly unnecessary in the context of a debate about municipal housing policy. The MP's repeated reference to the applicant's name and address was particularly regrettable. The Court considers that the unfortunate consequences of the MP's comments for the lives of the applicant and her children were entirely foreseeable. However, these factors cannot alter the Court's conclusion as to the proportionality of the parliamentary immunity at issue, since the creation of exceptions to that immunity, the application of which depended upon the individual facts of any particular case, would seriously undermine the legitimate aims pursued.

89. There has, accordingly, been no violation of Article 6 § 1 of the Convention as regards the parliamentary immunity enjoyed by the MP.

B. Legal aid

90. The applicant complained further under Article 6 § 1 that the absence of legal aid for defamation proceedings in the United Kingdom violated her right of access to a court.

91. The Government argued that this aspect of the applicant's complaint should be restricted to the MP's press statement, since any cause of action in respect of his speech would have been bound to fail and thus could not have required the provision of legal aid. They submitted that the national authorities had determined within their margin of appreciation that it was not in the public interest to allocate limited legal aid resources to the pursuit of defamation actions. However, they pointed out that, as of July 1998, it had been open to the applicant to seek legal assistance by way of a

conditional fee arrangement. The "Green Form" scheme would also, they said, have allowed the applicant to secure initial advice on the strength of any claim.

92. The applicant submitted that her inability to secure legal aid for the purposes of bringing defamation proceedings in respect of the untrue allegations made against her violated her right of access to a court under Article 6 § 1. She argued that the Commission's case-law dismissing complaints against the United Kingdom about the non-availability of legal aid in defamation proceedings was limited to the facts of each case. She maintained that it would have been wholly unrealistic to expect her to commence proceedings as a litigant in person, since she had no formal qualifications and was an unmarried mother of two young children. She argued that publicly funded legal assistance was particularly warranted on the facts of her case due to her financial situation and the severity of the consequences of the MP's allegations both for her and for her children.

93. The applicant accepted that, after July 1998, it had been open to her to seek lawyers to act for her on a contingency fee basis, but pointed out that she would have remained exposed to potential liability for her opponent's costs had she lost and that, at the time in question, contingency fee arrangements were still a novelty. Although in some cases insurance against the costs risk was available, the applicant said that it was expensive and beyond her means and that, so far as she was aware, such insurance only became available after the relevant limitation period had expired in July 1999. As for the "Green Form" scheme, she highlighted that this did not pay for legal representation in court.

94. The Court observes first that the MP's parliamentary statements, and the subsequent press reports of them, were each protected by a form of privilege. Since any legal proceedings brought by the applicant in relation to those statements or reports would have had no prospects of success, the Court will restrict its analysis of this complaint to the unavailability of legal aid for the purposes of bringing defamation proceedings in respect of the unprivileged press release.

95. The Court has reiterated (at paragraph 73 above) that the right of access to a court constitutes an element which is inherent in the right to a fair hearing under Article 6 § 1 of the Convention.

96. It reiterates further that, despite the absence of a clause similar to Article 6 § 3 (c) of the Convention in the context of civil litigation, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for effective access to a court, either because legal representation is rendered compulsory, or by reason of the complexity of the procedure or of the case (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, pp. 14-16, § 26).

97. However, as *Airey* itself made clear (pp. 12-16, §§ 24 and 26), Article 6 § 1 leaves to the State a free choice of the means to be used in

guaranteeing litigants a right of effective access to a court. The question whether or not that Article requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case. There may be occasions, for example, when the possibility of appearing before the High Court in person will meet the requirements of Article 6 § 1, and where the guidance provided by the procedural rules and court directions, together with some access to legal advice and assistance, may be sufficient to provide an applicant with an effective opportunity to put his or her case (see also *McVicar v. the United Kingdom*, no. 46311/99, §§ 46-62, ECHR 2002-III).

98. The Court notes that the applicant was entitled to an initial two hours' free legal advice under the "Green Form" scheme and, after July 1998, could have engaged a solicitor under conditional fee arrangements (see paragraphs 29 and 30 above). Although she would have remained exposed to a potential costs order in the event that any legal proceedings were unsuccessful, she would have been able to evaluate the risks in an informed manner before deciding whether or not to proceed had she taken advantage of the "Green Form" scheme.

99. In all the circumstances, the Court concludes that the unavailability of legal aid for the purposes of bringing defamation proceedings in respect of the unprivileged press statement did not prevent the applicant from having effective access to a court.

100. There has, accordingly, been no violation of Article 6 § 1 of the Convention as regards the unavailability of legal aid.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

101. The applicant also complained that the absolute nature of the privilege which protected the MP's statements about her in Parliament violated her right to respect for private life under Article 8 of the Convention.

The relevant parts of Article 8 provide:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others."

102. The Court has already commented (see paragraph 65 above) that the central issues of legitimate aim and proportionality that arise in relation to the applicant's Article 8 complaint are the same as those arising in relation to her Article 6 § 1 complaint about the parliamentary immunity enjoyed by the MP.

103. It therefore follows from the Court's conclusion on that aspect of the applicant's Article 6 § 1 complaint that there has been no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 6 § 1

104. The applicant argued that she was disadvantaged as compared to a person subject to statements equivalent to those of the MP but made in an unprivileged context.

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] 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."

105. The Government commented that the applicant's Article 14 complaint added nothing to her complaints under Articles 6 § 1 and 8 of the Convention. In particular, they submitted that, if privileges are compatible with the requirements of Article 6 of the Convention alone, then they must be equally compatible with the requirements of Article 6 taken in conjunction with Article 14. They argued further that a person about whom damaging remarks have been made in Parliament is not in a relevantly similar position to a person about whom such remarks have been made outside Parliament.

106. The Court considers that the applicant's Article 14 complaint raises issues which are identical to those already examined above in relation to Article 6 § 1. In any event, it concludes that no analogy can be drawn between what is said in parliamentary debates and what is said in ordinary speech so as to engage Article 14 in this context.

107. It follows that there has been no violation of Article 14 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

108. The applicant contended that the absolute privilege enjoyed by MPs in Parliament, together with the qualified privilege enjoyed by the press, led to the absence of any effective remedy in respect of her complaints, contrary to Article 13 of the Convention.

Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] 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."

109. The Government contended that the applicant's only arguable complaints related to the allegations made in the MP's unprivileged press release. In respect of that release, they stated that the applicant had had an unfettered right of access to a court by way of proceedings in defamation or breach of confidence.

110. According to the Court's case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

111. The Court has found above that there has been no violation of Articles 6 § 1, 8 or 14 of the Convention in this case. Nevertheless, having previously declared the applicant's complaints admissible, the Court is satisfied that the applicant had an "arguable claim" that those Articles had been violated.

112. However, the Court reiterates that Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's primary legislation to be challenged before a national authority on grounds that it is contrary to the Convention (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 47, § 85). The applicant's complaints related to the immunity conferred by Article 9 of the Bill of Rights 1689 and to the unavailability of legal aid under Schedule 2, Part II of the Legal Aid Act 1988.

113. The Court thus concludes that the facts of the present case disclose no violation of Article 13 of the Convention.

FOR THESE REASONS THE COURT

1. *Holds* by six votes to one that, as regards the parliamentary immunity enjoyed by the MP, there has been no violation of Article 6 § 1 of the Convention;

2. *Holds* by six votes to one that, as regards the unavailability of legal aid, there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* by six votes to one that there has been no violation of Article 8 of the Convention;

4. *Holds* unanimously that there has been no violation of Article 14 of the Convention taken in conjunction with Article 6 of the Convention;

5. *Holds* by six votes to one that there has been no violation of Article 13 of the Convention.

Done in English, and notified in writing on 17 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Mr Costa;
(b) dissenting opinion of Mr Loucaides.

J.-P.C.
S.D.

CONCURRING OPINION OF JUDGE COSTA

(Translation)

In the present case, like the majority of my colleagues, I found that there had been no violation of the Convention. I should like, however, to express a different opinion on certain points from the reasoning set out in the judgment, and to make some observations of a more general nature.

The line of reasoning in the judgment may be summarised as follows: the absolute nature of the immunity enjoyed by members of Parliament in respect of their statements serves an interest that is so important as to justify the denial of access to a court to seek redress. Accordingly, irrespective of the seriousness (see paragraphs 14-18 of the judgment) of the interference with the applicant's private and family life as a result of the speech by a member of Parliament, her rights under Article 6 § 1 and Article 8 of the Convention were not infringed. Thus far, I have no reservations about the approach followed.

However, I am not persuaded by the considerations set out in paragraph 86 to the effect that victims of defamatory misstatement in Parliament are not entirely without means of redress. In actual fact, the means in question, which are outlined in paragraph 27, appear to me to be more theoretical and illusory than practical and effective. This "justification" is, moreover, unnecessary, for if, as the majority consider, parliamentary immunity – even where absolute – is not contrary to the Convention (see paragraph 88 of the judgment), what is the use of seeking to show that it is not absolute? It would have been better to say nothing, or to point out that the applicant was a voter in the constituency of the MP who had made critical comments in the House of Commons identifying her by name, and that it would ultimately be for the voters to decide at the next election whether his attacks had been unjustified or excessive.

Similarly, I still find it odd that an impairment of the very essence of the right of access to a court should be measured according to the principle of proportionality (a point I have already raised in my concurring opinion annexed to *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, ECHR 2001-VIII – see also, along similar lines, the concurring opinion of Judge Ress joined by Judge Zupančič). It is certainly consistent with the case-law to accept in cases which, to my mind, should be exceptional that an *absolute* restriction on the right of access to a court does not breach Article 6 § 1. But in such cases I find it illogical that a review of proportionality should be conducted *besides*. I shall not labour the point.

I should now like to make some more general remarks. As the third-party interventions make clear, parliamentary immunities exist throughout Europe, with slight variations, and I do not wish in any way to question the grounds for their existence. It is certainly essential for democracy that the

elected representatives of the people should be able to speak freely in Parliament (whether they should outside Parliament is a different matter), without the slightest fear of being prosecuted for their opinions (or for the way in which they vote). But should this sacrosanct principle not be tempered? Since the 1689 Bill of Rights or the 1791 French Constitution (in which the principle was first established in France), relations between parliaments and the outside world have changed. Parliaments are no longer solely or chiefly concerned with protecting their members from the sovereign or the executive. Their concern should now be to affirm the complete freedom of expression of their members, but also, perhaps, to reconcile that freedom with other rights and freedoms that are worthy of respect.

In spite of the very serious accusations made against the applicant and the severe damage sustained by her and her children as a result, *A. v. the United Kingdom* did not, in my view, appear to lend itself to efforts to bring about such a reconciliation. In fact, I am not at all sure that it should be for a court, even one with the task of applying the Convention, "an instrument of European public order (*ordre public*) for the protection of individual human beings" (see *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, p. 31, § 93), to impose any particular model on the Contracting States in such a politically sensitive field. However, I am convinced that some progress in that field is desirable and possible on their part, and I was anxious to convey that point.

DISSENTING OPINION OF JUDGE LOUCAIDES

I disagree with the majority as regards the complaints under Article 6 § 1 and Articles 8 and 13 of the Convention and, as far as the reasoning is concerned, the complaint under Article 14.

The case concerns primarily the question of the compatibility of an absolute privilege protecting defamatory parliamentary statements about private individuals with Article 6 § 1 and Article 8 of the Convention. I will come to the other questions later.

I consider it important to stress from the outset those facts of the case which demonstrate the problem and provide the necessary guidance in determining the question of proportionality of the immunity in question as a possible restriction on the rights under Articles 6 and 8 of the Convention (access to a court and respect for private life).

The applicant, a young black woman, lives with her two children in a house owned by the local housing association. The association moved the applicant and her children to 50 Concorde Drive in 1994 following a report that she was suffering serious racial abuse at her then current address.

The applicant was specifically referred to by her member of Parliament (MP) during a debate in the House of Commons about municipal housing policy in July 1996. The MP named the applicant, repeatedly stated that her brother was in prison, and gave her precise address, again repeatedly, in the course of making derogatory remarks about the behaviour of both her and her children in and around her home. He referred to them as the "neighbours from hell", a phrase which was subsequently picked up by local and national newspapers and used to describe the applicant in articles published about her. The applicant stated that none of the allegations which the MP had made against her had ever been substantiated and that many of them had originated from neighbours who were motivated by racism and spite. The MP stated in his speech, *inter alia*:

> "...
>
> 'Such behaviour manifests itself in many different ways and at varying levels of intensity. This can include vandalism, noise, verbal and physical abuse, threats of violence, racial harassment, damage to property, trespass, nuisance from dogs, car repairs on the street, joyriding, domestic violence, drugs and other criminal activities such as burglary.'
>
> Inevitably, the majority – if not all – of these activities have been forced on the neighbours of 50 Concorde Drive ... by [the applicant], her children and their juvenile visitors, who seem strangely reluctant to attend school during normal hours, and even more adult visitors who come to the house at all times of the day and night, frequently gaining entry by unorthodox means such as the bathroom window."

The MP never tried to communicate with the applicant regarding the complaints made about her by her neighbours and never attempted to verify

the accuracy of his comments made in his speech either before or after the debate. Shortly before the debate, the MP issued a press release to several newspapers.

The following day certain newspapers carried articles consisting of extracts of the speech based upon the press release. There were also television interviews on the same subject. The articles included photographs of the applicant and mentioned her name and address. The main headline in the *Evening Post* was "MP Attacks 'Neighbours From Hell' ".

In the *Daily Express* the headline was "MP names nightmare neighbour".

The applicant subsequently received hate mail addressed to her at 50 Concorde Drive. One letter stated that she should "be in houses with your own kind, not in amongst decent owners".

Another letter stated:

> "You silly black bitch, I am just writing to let you know that if you do not stop your black nigger wogs nuisance, I will personally sort you and your smelly jungle bunny kids out."

The applicant was also stopped in the street, spat at and abused by strangers as "the neighbour from hell".

Following the MP's speech, the lives of the applicant and her children were put at risk. The responsible housing association advised that the applicant and her children should be moved as a matter of urgency just three months after the speech was given. They were re-housed in October 1996 and the children were obliged to change schools.

The applicant wrote through her solicitors to the MP outlining her complaints and seeking his comments thereon. She received in reply a copy of the letter prepared by the Parliamentary Speaker, which read as follows:

> "Subject to the rules of order in debate, Members may state whatever they think fit in debate, however offensive it may be to the feelings or injurious to the character of individuals, and they are protected by this privilege from any action for libel, as well as from any other molestation."

The applicant complained that the absolute privilege enjoyed by the MP blocked her access to the courts in order to assert her rights in respect of defamation proceedings, contrary to Articles 6 and 8 of the Convention. According to the applicant, this privilege was a disproportionate restriction on her rights under these Articles.

Before entering into the merits I must consider the preliminary objection of the Government that the complaint regarding absolute privilege in respect of the speech in the House of Commons was incompatible *rationae materiae* on the ground that an applicant had no civil right to the protection of his reputation in respect of statements covered by absolute privilege. In this connection, the Government relied on a decision of the Commission in 1976 in *Agee v. the United Kingdom* (no. 7729/76, Decisions and Reports (DR) 7, p. 164). However, this case was superseded by *Young v. Ireland*,

decided in 1996 (no. 25646/94, DR 84-A, p. 122), by *Fayed v. the United Kingdom*, decided by the Court in 1994 (Series A no. 294-B, p. 23), and by *Osman v. the United Kingdom* (*Reports of Judgments and Decisions* 1998-VIII, p. 3124) and *Z and Others v. the United Kingdom* (no. 29392/95, ECHR 2001-V), which to my mind deal with immunities as being procedural bars on access to a court, rather than delimiting of the relevant cause of action. In any case, I believe that it is clear from the exposition of the United Kingdom law on this subject that the privilege is simply a defence to an action for libel. Therefore it only operates as a procedural shield against an action in the same way as other defences such as truth. For example, in the case of the defence of truth, it cannot seriously be argued that there is no cause of action in respect of a defamatory statement because it will be proved that the statement was true. A defence does not extinguish a right. It simply serves to neutralise responsibility for a cause of action if and when the prerequisites of the specific defence are satisfied.

Therefore I find that the relevant objection of the Government must be dismissed.

As regards the merits of the case, it is true that absolute privilege in England serves the legitimate aim of protecting free debate in the public interest and of regulating the relationship between the legislature and the judiciary. And this is conceded by the applicant.

Coming now to the question of whether absolute privilege is a proportionate restriction to the right of access to a court, the position of the parties is the following.

The Government argued that absolute privilege was proportionate to the importance of the public interest which it was intended to serve. The Government relied in this connection on the following statement in an English judgment:

> "The important public interest protected by such privilege is to ensure that the member ... at the time he speaks is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he was saying. Therefore he would not have the confidence the privilege is designed to protect."

The argument regarding encouragement of an uninhibited debate on public issues is understandable. But the opposite argument appears to me to be more convincing: the suppression of untrue defamatory statements, apart from protecting the dignity of individuals, discourages false speech and improves the overall quality of public debate through a chilling effect on irresponsible parliamentarians.

The Government argued that once it was recognised that the rule of absolute parliamentary immunity was justified in principle in the public interest, there was no basis for distinguishing between the facts of individual cases.

Both parties, in support of their positions, referred to *Young*, cited above, which was decided by the Commission in 1996. The Government suggested that this case was an authority for the proposition that where a public interest was of sufficient importance an immunity from suit for defamation was proportionate even if it was absolute in nature. On the other hand, the applicant submitted that that decision supported the proposition that the question of proportionality of a privilege to the aim pursued should be decided in the light of the facts of each case. I believe that the text of the relevant decision of the Commission supports the latter view.

Like myself, the majority agreed with the applicant's submissions to the effect that

> "the allegations made about her in the MP's speech were extremely serious and clearly unnecessary in the context of a debate about municipal housing policy. The MP's repeated reference to the applicant's name and address was particularly regrettable ... the unfortunate consequences of the MP's comments for the lives of the applicant and her children were entirely foreseeable". (paragraph 88 of the judgment)

However, the majority go on to state that

> "these factors cannot alter the Court's conclusion as to the proportionality of the parliamentary immunity at issue, since the creation of exceptions to that immunity, the application of which depended upon the individual facts of any particular case, would seriously undermine the legitimate aims pursued". (ibid.)

I entirely disagree with this approach. I believe that, as in the case of the freedom of the press, there should be a proper balance between freedom of speech in Parliament and protection of the reputation of individuals. The general absolute privilege of parliamentarians has an ancient history. It was established about 400 years ago when the legal protection of the personality of the individual was in its infancy and therefore extremely limited. In the meantime such protection has been greatly enhanced, especially through the case-law of this Court. This is exemplified by the expansion of the protection of privacy. The right to reputation is nowadays considered to be protected by the Convention as part of private life (see *N. v. Sweden*, no. 11366/85, Commission decision of 16 October 1986, DR 50, p. 173, and *Fayed*, cited above, pp. 50-51, § 67). Therefore "the State must find a proper balance between the two Convention rights involved, namely the right to respect for private life guaranteed by Article 8 and the right to freedom of expression guaranteed by Article 10 of the Convention" (*N. v. Sweden*, op. cit., p. 175). This balance can only be achieved through a system which takes account of the individual facts of particular cases on the basis of the relevant conditions and exceptions attached to both rights. Such balancing implies that neither of the two rights should be allowed to prevail absolutely over the other. There should be a harmonious reconciliation, through appropriate qualification, so that the necessary protection is given to both rights. If freedom of speech were to be absolute under any circumstances it would not be difficult to imagine possible abuses which

could in effect amount to a licence to defame or, as the US Supreme Court Justice Stevens said, "an obvious blueprint for character assassination" [*Philadelphia Newspapers Inc. v. Hepps*, 89 L Ed 2d 783 (1986)].

As is rightly pointed out by US Supreme Court Justice Stewart, "the right of redress for harm to reputation reflects no more than our basic concept of the essential dignity and worth of every human being – a concept at the root of any decent system of ordered liberty" [*Rosenblatt v. Baer*, 383 US 75, 92 (1966)].

The Government highlighted the conclusions reached by the recent review of parliamentary privilege by a joint committee of the House of Commons and House of Lords in support of retaining the rule of absolute parliamentary immunity (see paragraph 32 of the judgment). This review does not affect my approach because (a) it was not carried out by any organ independent of the persons enjoying the privilege in question, and (b) it does not seem to address the question that we face in this case in terms of the European Convention on Human Rights and in the light of developments regarding the right to reputation.

On the facts of the present case I believe that absolute immunity is a disproportionate restriction of the right to access to a court. In this respect I take into account the following:

(a) the fact that the defamatory allegations, in which the applicant was named and her address identified, were "clearly unnecessary in the context of a debate about municipal housing policy" (paragraph 88 of the judgment);

(b) the severity of the defamatory allegations (ibid.);

(c) the foreseeable harsh consequences for the applicant and her family, including even the publication of the photographs of the applicant and her children (ibid.);

(d) the reaction of the MP to the letter from the applicant;

(e) the fact that the MP never tried to verify the accuracy of his defamatory allegations and did not give the applicant an opportunity to comment on them before uttering them;

(f) the lack of any effective alternative remedies.

I would even go as far as to support the view that, even without any regard to the facts of the case, the immunity is a disproportionate restriction on the right of access to a court because of its absolute nature, which precludes the balancing of competing interests.

It is true that there are several other countries with absolute privilege, for example Norway, the Netherlands and Turkey. But it is equally true that there are other countries in Europe (the majority) where the privilege is not absolute, either because it does not apply to defamatory statements or because it can be lifted. In the case of the Council of Europe it can be waived by the country concerned.

As regards the complaint concerning the unavailability of legal aid for the purposes of bringing defamation proceedings in respect of the unprivileged press release, I again find myself in disagreement with the majority. Defamation proceedings entail various legal issues for which legal advice and assistance is necessary in order to have effective access to a court and pursue the proceedings. The arrangements set out in paragraph 98 of the judgment do not seem to be a satisfactory solution to the problem, with the result that the applicant could not in my opinion exercise effectively her right of access to a court in this case. Consequently I consider that there has also been a breach of Article 6 § 1 of the Convention on this ground.

Furthermore, the absolute privilege, which protected the MP's statements in Parliament about the applicant, in my opinion violated her right to respect for her private life under Article 8 of the Convention because it amounted to a disproportionate restriction of that right. In this connection, I refer to the reasons given above in relation to the applicant's Article 6 complaint.

I agree that there has been no violation of Article 14 in this case but my reasoning differs from that of the majority. As everybody in the situation of the applicant was treated in the same way under the legal system of the respondent State as regards the operation of the parliamentary immunity under consideration, no question of a violation of Article 14 arises on that basis.

Finally, the undisputed lack of any remedy against the defamatory statements in this case, arising from the absolute parliamentary privilege, does amount, in my opinion, to a violation of Article 13.