



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

COURT (PLENARY)

**CASE OF B. v. THE UNITED KINGDOM (ARTICLE 50)**

*(Application no. 9840/82)*

JUDGMENT

STRASBOURG

9 June 1988

**In the case of B v. the United Kingdom\*,**

The European Court of Human Rights, taking its decision in plenary session pursuant to Rule 50 of the Rules of Court and composed of the following judges:

Mr. R. RYSSDAL, *President*,

Mr. J. CREMONA,

Mr. Thór VILHJÁLMSSON,

Mr. G. LAGERGREN,

Mr. F. GÖLCÜKLÜ,

Mr. F. MATSCHER,

Mr. J. PINHEIRO FARINHA,

Mr. L.-E. PETTITI,

Mr. B. WALSH,

Sir Vincent EVANS,

Mr. R. MACDONALD,

Mr. C. RUSSO,

Mr. R. BERNHARDT,

Mr. J. GERSING,

Mr. A. SPIELMANN,

Mr. J. DE MEYER,

Mr. N. VALTICOS,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 24 March and 28 May 1988,

Delivers the following judgment, which was adopted on the last-mentioned date, on the application in the present case of Article 50 (art. 50) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"):

## PROCEDURE AND FACTS

1. The case was referred to the Court on 28 January 1986 by the European Commission of Human Rights ("the Commission"). It originated in an application (no. 9840/82) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission in 1982 by a British citizen.

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\* Note by the Registrar: The case is numbered 5/1986/103/151. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

2. On 23 October 1986, the Chamber constituted to examine the case relinquished jurisdiction in favour of the plenary Court (Rule 50 of the Rules of Court). By judgment of 8 July 1987 ("the principal judgment"), the plenary Court held, *inter alia*, that the applicant had been the victim of breaches of Articles 8 and 6 § 1 (art. 8, art. 6-1) of the Convention by reason of the procedures followed and the insufficiency of the remedies available in connection with decisions relating to her child in the care of a local authority (Series A no. 121-B, paragraphs 59-83 of the reasons and points 1 and 3 of the operative provisions, pp. 71-80 and 81).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. Accordingly, as regards the facts, reference should be made to paragraphs 8-54 of the principal judgment (*ibid.*, pp. 63-70).

3. At the Court's hearing on 25-26 November 1986, the Government of the United Kingdom ("the Government") reserved their position on the applicant's claim for just satisfaction, which claim had not then been quantified.

In the principal judgment, the Court therefore reserved the whole of this question; it invited (a) the applicant to submit, within the next two months, full written particulars of her claim; and (b) the Government to submit, within two months of receipt of those particulars, their written comments thereon and, in particular, to notify the Court of any agreement reached between them and the applicant (paragraphs 86-87 of the reasons and point 5 of the operative provisions, pp. 81-82).

4. In accordance with the foregoing invitation and the President's directions, there were filed at the registry:

- on 1 October 1987, memorial of the applicant;
- on 21 December 1987 and 12 February 1988, memorials of the Government;
- on 21 January 1988, observations of the Delegate of the Commission.

These documents revealed that no agreement had been concluded between the Government and the applicant.

5. Having consulted the Agent of the Government, the Delegate of the Commission and the representative of the applicant, the Court decided, on 24 March 1988, that there was no need to hold a hearing.

## AS TO THE LAW

6. Under Article 50 (art. 50) of the Convention,

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or

measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

Under this provision the applicant claimed, *inter alia*, compensation for non-pecuniary damage and reimbursement of costs and expenses incurred in the proceedings before the Convention institutions.

### **A. Damage**

7. (a) The applicant claimed exemplary and aggravated, but unquantified, damages for the violations of Articles 6 § 1 and 8 (art. 6-1, art. 8) of the Convention found by the Court in the principal judgment. Such damages were to cover the loss of her child P, the state of uncertainty in which she had been left for more than five years from April 1978 until December 1983 with regard to the future of the child, and the mental anguish which she had suffered.

(b) The Government argued that although the alleged damage might have been the consequence of the local authority decisions in which the Court had found the applicant to have been insufficiently involved and of her lack of access to P, it was not attributable to the breaches of Articles 6 § 1 and 8 (art. 6-1, art. 8), since there was no evidence that the outcome would have been different if she had been more closely involved or if she had been able to have the question of her access to this child reviewed by a tribunal having jurisdiction to examine the merits of the matter. Consequently, no causal link had been demonstrated between the violations of the Convention found by the Court and any damage alleged by the applicant.

The Government further contended that, having regard to particular facts of the case which they set out in their memorial, there was no evidence that a closer involvement of the applicant in the local authority's decision-making process or the availability of a judicial remedy on the access issue could actually have benefited her in practical terms. Accordingly, she had not suffered a "loss of real opportunities", as that expression was understood in the Court's case-law, and the findings of violation of Articles 6 § 1 and 8 (art. 6-1, art. 8) therefore constituted sufficient just satisfaction for the purposes of Article 50 (art. 50). If, however, the Court should take a different view on this point, then - the Government submitted in the alternative - any sum awarded to the applicant should, in all the circumstances of the case, not exceed £5,000.

(c) The Delegate of the Commission considered that it was not possible to establish with any degree of certainty whether the relevant decisions would have been different if the breaches of Articles 6 § 1 and 8 (art. 6-1, art. 8) had not occurred. In his view, the applicant should nevertheless receive a "reasonable amount" of compensation for non-pecuniary loss, which amount should reflect the serious nature of the issues involved.

8. The Court would recall in the first place that the principal judgment was in no way concerned with the justification for such matters as the taking into public care or the adoption of the child or the restriction or termination of the applicant's access to him. Violations were found solely on the following grounds: as regards Article 8 (art. 8), the applicant's insufficient involvement in the local authority's decisions to move P to long-term foster parents (June 1978) and to terminate her access to the child (May 1980); the failure in the decision-making process adequately to take account of the consequences of the social workers' strike on the programme to promote rehabilitation of P with his mother and grandfather; and, as regards Article 6 § 1 (art. 6-1), the non-availability of a judicial remedy on the merits of the access issue (see the principal judgment, pp. 74-76, §§ 66-70, and pp. 79-80, §§ 80-83).

Whilst the applicant was thus the victim of deficiencies of a procedural nature, they were all the same deficiencies that were intimately connected with an interference with one of the most fundamental of rights, namely that of respect for family life.

9. As regards the loss of P, which the applicant attributed to the breaches of the Convention, it cannot be affirmed with certainty that this would not have occurred in the absence of the procedural deficiencies in question. The Court finds it impossible to assert that, if the applicant had been more closely involved in the relevant deliberations of the local authority, the outcome would definitely have been different. And even if a judicial remedy on the merits of the access question had been available to and had been successfully exercised by the applicant during the currency of the care orders, it would by no means have followed automatically that P would have been restored to her care or would not eventually have been adopted; as the Court pointed out in paragraph 81 of the principal judgment, "whether a child should be in public care and whether his parent should have access to him are matters to which different considerations may well apply".

10. On the other hand, the Court does not feel able to conclude that, as the Government submitted, no practical benefit could have accrued to the applicant if the procedural deficiencies in question had not existed.

It is true that, having regard to the applicant's lifestyle and apparent lack of interest in the child at the time, it seems somewhat unlikely that the local authority's decision of June 1978 would have been any different even if she had been involved in the procedure leading thereto (see the principal judgment, pp. 64-65, §§ 12-13); however, such involvement would have brought home to her the situation and enabled her to reflect upon it and make representations at a crucial time. It is also true that when the local authority took its decision of May 1980 to terminate access, P had already been with his foster parents for nearly two years. However, closer involvement of the applicant in the decision-making process at that stage

would at least have enabled her to put her case on such matters as the adverse effects of the social workers' strike on the agreed rehabilitation programme; the strength of her desire to re-establish her relationship with P (for which the County Court judge found in July 1983 she had at all times made genuine efforts); and the continuing and positive relationship between P and his grandfather, with whom the applicant then had a settled home (*ibid.*, pp. 65-67 and 68, §§ 13-18 and 22). Moreover, more should in any event have been done by the local authority to counter the effects of the social workers' strike on the programme of rehabilitation.

As regards the possible value to the applicant of a judicial remedy on the merits of the access issue, it has to be recalled that P was placed with long-term foster parents in June 1978 and that the applicant had no or only limited access to him from the start of the social workers' strike (November 1978) until his adoption (December 1983) (*ibid.*, pp. 65-69, §§ 13-24). However, as the County Court found in July 1983, at least in the early part of this period the local authority and the applicant "understood and were agreed that rehabilitation between mother and child was to be pursued" (*ibid.*, p. 68, § 22); it was, in fact, the strike - a matter outside the applicant's control - that occasioned the first total cessation of access. And there was the fact that from July 1978 the applicant had a settled home with her father, who had a continuing and positive relationship with P. Furthermore, the different considerations involved mean, as the Court pointed out in paragraph 81 of the principal judgment, that a parent "may be able to adduce reasons warranting a continuation or restoration of access but not of his care of the child". It cannot, in the Court's opinion, be excluded that if during the currency of the care orders the applicant had been able to have the question of her access to P reviewed by a court on its merits, she might have obtained some degree of satisfaction, especially if she had made her application at a sufficiently early date. And this could have changed the whole future complexion of her relationship with the child.

In these respects she may therefore be said to have suffered some loss of real opportunities, warranting monetary compensation.

11. In addition to the foregoing, the fact that the applicant was not consulted about the local authority's decision of May 1980 or informed in advance of the meeting at which it was taken must, in the Court's view, have caused her considerable distress. To this was added the feeling of frustration and helplessness which she must have experienced as a result of her inability, during the currency of the care orders, to refer the merits of the access issue to the courts. These are all matters that similarly warrant monetary compensation.

12. None of the factors cited in paragraphs 10 and 11 above lends itself to precise quantification. Making an assessment on an equitable basis, as is required by Article 50 (art. 50), the Court awards the applicant £12,000 for damage sustained.

## **B. Costs and expenses**

13. The applicant claimed, in respect of lawyer's fees and disbursements incurred in the proceedings before the Commission and the Court, the sum of £20,051.32, excluding value added tax and before deduction of the amounts she had received from the Council of Europe by way of legal aid.

14. The Government did not contest that the applicant had incurred liability to pay sums additional to those covered by the aforesaid legal aid and they indicated their willingness to reimburse such costs as had been actually and necessarily incurred and were reasonable as to quantum. They did, however, make a series of observations on this claim and they submitted that just satisfaction under this head would be accorded by the payment to the applicant of £9,750 plus value added tax, less the legal aid payments.

15. The Court has examined the claim in the light of the criteria emerging from its established case-law and of the Government's observations. In so doing, it has noted the following points.

(a) The services rendered by a lawyer to his client must be tailored to the latter's specific needs and circumstances and the Court thus attaches weight to the applicant's lawyer's general submission that the greatest diligence was necessitated in the present case on account of the applicant's limited abilities. For these reasons, the Court is unable to sustain the Government's objections to the charges made for work relating to legal aid and to the travelling expenses of the applicant and her father.

(b) As the Government maintained, it may be doubted whether it was necessary for the applicant to be represented by two lawyers in February 1985 at the meeting with a social work adviser and then at the meeting to discuss a possible friendly settlement of the case. The same cannot be said of the conference in November 1986 with the representatives of the applicants in the related cases of O, H, W and R v. the United Kingdom, which must have entailed complex and detailed consideration of the arguments to be presented at the Court's hearing.

(c) Whilst the Court is not in a position to enter into the detailed calculations involved, it does share the doubts expressed by the Government as to certain charges for telephone calls and photocopying. On the other hand, it cannot fully subscribe to the Government's proposition that, whilst travelling, a lawyer does little or no work for his client.

(d) Whilst the Court could accept as reasonable a sum somewhat higher than the £4,000 suggested by the Government for preparing for and attending the Court's hearing, it agrees that the amount claimed for this item (£9,712.50 exclusive of value added tax) appears too high. The same applies to the amount claimed for drafting the applicant's memorial on Article 50 (art. 50) (£370). More generally, as the Government pointed out, in the

Abdulaziz, Cabales and Balkandali judgment of 28 May 1985 (Series A no. 94) the Court allowed a charge of £40 per hour for work done by solicitors in 1980-1984; it agrees that in the present case a figure of £60 or £70 per hour (depending on the nature of the work) would be fair and reasonable.

16. Taking into account the above factors and also the relevant legal aid payments made by the Council of Europe and making an assessment on an equitable basis, the Court considers that the applicant is entitled to be reimbursed, for legal fees and expenses, the sum of £10,500 plus value added tax.

### C. Miscellaneous

17. The applicant also sought a declaration by the Government as to how they intended to ensure that United Kingdom law as it related to child care would not infringe the rights guaranteed by the Convention.

The Court notes that its judgments leave to the State concerned the choice of the means to be used in its domestic legal system to give effect to its obligation under Article 53 (art. 53) (see, *inter alia*, the Pauwels judgment of 26 May 1988, Series A no. 135, § 41).

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the United Kingdom is to pay to the applicant £12,000 (twelve thousand pounds) for non-pecuniary damage and £10,500 (ten thousand five hundred pounds) plus value added tax for costs and expenses;
2. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 9 June 1988 pursuant to Rule 54 § 2, second sub-paragraph, of the Rules of Court.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar