



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

COURT (CHAMBER)

**CASE OF CAMPBELL AND COSANS v. THE UNITED KINGDOM
(ARTICLE 50)**

(Application no. 7511/76; 7743/76)

JUDGMENT

STRASBOURG

23 March 1983

In the case of Campbell and Cosans,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court*, as a Chamber composed of the following judges:

Mr. R. RYSSDAL, *President*,

Mr. Thór VILHJÁLMSSON,

Mr. L. LIESCH,

Mr. F. GÖLCÜKLÜ,

Mr. B. WALSH,

Sir Vincent EVANS,

Mr. R. MACDONALD,

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

Having deliberated in private on 28 January and 21 February 1983,

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:

PROCEDURE AND FACTS

1. The present case was referred to the Court in October 1980 by both the European Commission of Human Rights ("the Commission") and the Government of the United Kingdom of Great Britain and Northern Ireland ("the Government"). The case originated in two applications (nos. 7511/76 and 7743/76) against the United Kingdom lodged with the Commission in 1976 by Mrs. Grace Campbell and by Mrs. Jane Cosans on behalf of herself and her son Jeffrey, the latter also being hereinafter referred to as an "applicant".

2. By judgment of 25 February 1982, the Court held that the existence of corporal punishment as a disciplinary measure in the schools attended by the applicants' sons did not constitute, as regards those children, a violation of Article 3 (art. 3) of the Convention but did constitute, as regards their parents, a breach of the second sentence of Article 2 of Protocol No. 1 (P1-2). It also held that, as regards Jeffrey Cosans, his suspension from school following his refusal to accept such punishment had given rise to a breach of the first sentence of the last-mentioned Article (P1-2) (Series A no. 48,

* Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules of Court entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

points 1-3 of the operative provisions and paragraphs 24-41 of the reasons, pp. 12-20).

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, the Court will confine itself here to giving the pertinent details; for further particulars, reference should be made to paragraphs 8-19 of the above-mentioned judgment (*ibid.*, pp. 6-10).

3. At the hearings on 25 September 1981, counsel for Mrs. Cosans had stated that, should the Court find a violation, his client would seek just satisfaction under Article 50 (art. 50) in respect of moral damage and legal costs. The Government had not taken a stand on the matter, nor had counsel for Mrs. Campbell.

In its judgment of 25 February 1982, the Court reserved the whole of this question. The Commission was invited to submit to the Court, within the coming two months, written observations thereon and, in particular, to notify the Court of any friendly settlement at which the Government and the applicants might have arrived (point 4 of the operative provisions and paragraph 42 of the reasons, *ibid.*, pp. 19 and 20).

4. Following several extensions of the aforesaid time-limit by the President of the Chamber and in accordance with his Orders and directions, the registry received:

- (a) on 26 August 1982, from the Secretary to the Commission:
 - details of the applicants' claims, which had been submitted to him on 26 March 1982 (Mrs. Campbell) and 20 and 26 April 1982 (Mrs. Cosans and Jeffrey Cosans);
 - the Government's comments on those claims, as set out in a letter to him dated 24 August 1982;
- b) on 7 and 18 October 1982, observations of the Commission's Delegates on the application of Article 50 (art. 50) as regards Mrs. Cosans and her son and as regards Mrs. Campbell, respectively;
- (c) on 10 December 1982, further observations of the Government;
- (d) on 27 January 1983, further observations of the Delegates and of Mrs. Cosans and her son on the claims of these applicants.

These documents revealed that no friendly settlement had been arrived at. For ease of reference, further particulars of the applicants' claims and of the Government's and the Commission's position relative thereto are set out below in the section "As to the law".

5. Mr. F. Gölcüklü and Mr. B. Walsh, substitute judges, took the place of Mr. J. Cremona and Mr. L.-E. Pettiti, who were prevented from taking part in the further consideration of the case (Rules 22 § 1 and 24 § 1 of the Rules of Court).

6. Having consulted, through the Registrar, the Agent of the Government and the Delegates of the Commission, the Court decided on 21 February 1983 that there was no call to hold hearings.

AS TO THE LAW

I. INTRODUCTION

7. Article 50 (art. 50) of the Convention, the applicability of which was not contested in the present case, reads as follows:

"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 present 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."

8. Mrs. Campbell, Mrs. Cosans and her son Jeffrey sought just satisfaction under a number of different heads. Their various claims will be considered in turn.

II. MRS. CAMPBELL

A. Pecuniary and non-pecuniary loss

9. Mrs. Campbell initially claimed the sum of £3,000 in respect of (a) her personal expenses in making the application in so far as not already covered by any payment which she had received from the Commission and (b) "due compensation".

10. (a) This applicant received from the Commission legal aid payments which covered her travel and subsistence expenses in attending the hearings before the Convention institutions. In the absence of any evidence establishing that she incurred other personal expenses, the Court is unable to make any award in respect of this item.

(b) As regards the claim for compensation, the Government contended that the finding of a violation, contained in the Court's above-mentioned judgment, together with the payment by the United Kingdom of the applicant's reasonable expenses necessarily and actually incurred, would provide "just satisfaction". The Commission's Delegates, having regard to the circumstances of the case, saw no basis for an award under this head.

The Court shares the view of the Delegates and therefore rejects this claim.

11. On 2 October 1982, Mrs. Campbell submitted a supplementary but unquantified claim "in respect of the cost of obtaining private education for her children".

However, the applicant has furnished no supporting evidence as far as this item is concerned. Furthermore, following a newspaper report to the

effect that her son Gordon was attending an independent school which used corporal punishment, the Delegates asked her to provide the name of the school involved; she declined to answer this request and has not denied the truth of the newspaper report. In these circumstances, the Court sees no justification for making any award in respect of her supplementary claim.

B. Legal costs and expenses

12. Mrs. Campbell claimed in respect of legal costs and expenses referable to the proceedings before the Convention institutions the following sums, subject to deduction of the amounts received from the Commission by way of legal aid:

(a) £700, for certain "expenses" of Mr. MacEwan, solicitor, who represented her before the Commission and the Court;

(b) £1,700, for the fees and travel expenses of Mr. Thornberry, barrister-at-law, who was instructed by Mr. MacEwan and also represented her before the Commission and the Court;

(c) £8,456.60, in respect of the services of Mr. Baker, who attended the hearing of 11 October 1978 before the Commission as her adviser.

The Government indicated that they were prepared to pay the reasonable and necessary costs actually incurred by the applicant which were not covered by the Commission's legal aid. However, they:

(a) requested for this purpose a breakdown of Mr. MacEwan's expenses, which has not, in fact, been supplied by the applicant;

(b) declined to pay that part of Mr. Thornberry's expenses that was attributable to travel between New York and London, submitting that the extra cost of bringing him from America was not necessarily or reasonably incurred;

(c) stated that they were "not ... prepared to make an offer in respect of any of the costs which Mr. Baker has incurred", since he had not acted in a capacity which would have entitled him, under the Commission's rules on legal aid, to receive a fee.

13. To be entitled to an award of costs and expenses under Article 50 (art. 50), the injured party must have incurred them in order to seek, through the domestic legal order, prevention or rectification of a violation, to have the same established by the Commission and later by the Court or to obtain redress therefore (see, *inter alia*, the Neumeister judgment of 7 May 1974, Series A no. 17, pp. 20-21, § 43). Furthermore, it has to be shown that the costs and expenses were actually incurred, were necessarily incurred and were also reasonable as to quantum (see, *inter alia*, the Le Compte, Van Leuven and De Meyere judgment of 18 October 1982, Series A no. 54, p. 8, § 17).

14. (a) Mrs. Campbell, who alone has the status of "injured party" for the purposes of Article 50 (art. 50), has not established that she paid or is liable

to pay to Mr. MacEwan any sums, over and above the amount received by way of legal aid, for which she might seek reimbursement; it follows that, in this respect, she has borne no expenses herself and has suffered no loss capable of being compensated under Article 50 (art. 50) (see, *inter alia*, the Airey judgment of 6 February 1981, Series A no. 41, p. 9, § 13).

(b) The Court, like the Commission's Delegates, accepts the Government's submission regarding Mr. Thornberry's travel expenses. Whilst Mrs. Campbell was free to employ representatives of her own choosing, she has not established that it was necessary to have recourse to counsel who, at the relevant time, was in America. No sum is therefore awarded in respect of his travel expenses, those referable to his journeys within Europe in connection with the Strasbourg proceedings having already been paid by the Council of Europe.

There remains the amount claimed in respect of Mr. Thornberry's professional fees, namely £1,000. It was not disputed that this expense was actually incurred (*cf.* the above-mentioned Airey judgment, *loc. cit.*) and that it was necessarily incurred and reasonable as to quantum; the applicant should accordingly receive just satisfaction therefor, subject to deduction of the amount received by her for this item from the Commission by way of legal aid, namely £60.

(c) The Commission informed the Court that it made no payments to Mr. Baker. The applicant did not contest the Government's submission regarding the capacity in which he acted for her but stated that his costs "should be re-submitted ... as a direct cost" to her. Assuming that the expense in question was actually incurred, the Court does not consider that it can be regarded as necessarily incurred, bearing in mind that Mrs. Campbell also had the services of a barrister and a solicitor (see, *mutatis mutandis*, the Young, James and Webster judgment of 18 October 1982, Series A no. 55, p. 8, § 15). The claim for this item is therefore rejected.

C. Claim for an undertaking

15. Mrs. Campbell also sought an undertaking from the Government that her children would not be subjected to any form of corporal punishment at schools within the United Kingdom's jurisdiction.

The Government, in addition to pointing out that Strathclyde Regional Council had decided that with effect from August 1982 corporal punishment would be abolished in the area for which it was responsible, stressed that they were actively considering the implications for the whole of the United Kingdom of the Court's above-mentioned judgment of 25 February 1982.

16. The Court's judgments leave to the Contracting State concerned the choice of the means to be utilised in its domestic legal system for performance of its obligation under Article 53 (art. 53) (see the Marckx judgment of 13 June 1979, Series A no. 31, p. 25, § 58). The Court is

therefore not empowered to direct the United Kingdom to give the undertaking sought (see also the Dudgeon judgment of 24 February 1983, § 15 in fine).

III. MRS. COSANS

A. Pecuniary and non-pecuniary loss

17. Mrs. Cosans claimed £5,000, for "moral damage".

18. The Commission's Delegates observed that this claim contained an element of material damage, in that it referred to "constant medical treatment", but they informed the Court that it had not been possible to obtain from the applicant a medical report. They therefore accepted the Government's objection that no evidence had been produced to substantiate such damage.

In these circumstances, the Court finds no basis for an award in respect of pecuniary loss under this head.

19. So far as the remainder of the claim was concerned, the Government submitted that the finding of a violation contained in the Court's above-mentioned judgment of 25 February 1982, together with the payment by the United Kingdom of the applicant's reasonable expenses necessarily and actually incurred, would provide "just satisfaction". The Delegates took the view, on the other hand, that Mrs. Cosans' mental suffering, caused by her son's suspension from school, called for some satisfaction under Article 50 (art. 50).

20. Although the Court recognises, and the Government did not deny, that Mrs. Cosans suffered some distress as a result of her son's suspension, it considers that adequate just satisfaction therefor has already been provided by the finding of a breach of her rights. The Court accordingly accepts the Government's submission.

B. Legal costs and expenses

21. Mrs. Cosans claimed in respect of legal costs and expenses referable to the proceedings before the Convention institutions the following sums, subject to deduction of the amounts received from the Commission by way of legal aid:

(a) £3,236.60 (inclusive of value added tax) - including £230 for services rendered in connection with the Article 50 (art. 50) claim - for the fees and disbursements of Messrs. Stirling, Eunson, Ferguson, solicitors, who represented her before the Commission and the Court;

(b) £9,234.50 (inclusive of value added tax), for the fees of Mr. MacLean, Q.C., who was instructed by Messrs. Stirling, Eunson, Ferguson and also represented her before the Commission and the Court.

The Government indicated that they were prepared to pay the reasonable and necessary costs actually incurred by the applicant which were not covered by the Commission's legal aid. However, they described the amount claimed in respect of Mr. MacLean as "excessive" and offered to pay for this item £2,000 plus value added tax at 8% in respect of the hearing before the Commission and £3,000 plus value added tax at 15% in respect of the hearing before the Court, that is a total of £5,610.

22. The Court notes that, as regards the amount claimed in respect of Messrs. Stirling, Eunson, Ferguson, there is no dispute that the criteria referred to in paragraph 13 above are satisfied. The whole of this item therefore falls to be retained for the purposes of Article 50 (art. 50).

As for Mr. MacLean's fees, the sole issue to be determined is whether they are "reasonable as to quantum". Having regard to the submissions of the Government and the applicant, the Court considers that the amount offered by the former is reasonable; the figure to be taken into account for this item is therefore £5,610.

From the resulting total figure of £8,846.60 falls to be deducted the sum of 2,300 FF which Mrs. Cosans has received from the Commission by way of legal aid.

IV. JEFFREY COSANS

23. Jeffrey Cosans claimed £25,000, for "moral damage". He alleged that his suspension from school had prevented him from taking certain examinations and from continuing study and training at further education establishments or night school, with the result that he was denied the opportunity of acquiring a skill for the future. It was further stated that since his suspension he had, except during a short period, been unemployed and had had to rely for financial support on his parents and on social security. He claimed that the suspension had not only caused him considerable embarrassment at the time but, being a matter of common knowledge, would have enduring adverse effects on his employment opportunities and prospects.

The Government contested this claim, notably on the ground that there was no evidence to suggest that Jeffrey's inability to find employment arose from the fact that he did not complete his schooling. They also questioned some of the factual assertions made by the applicant.

24. The relevant facts, as they appear from the documents before the Court, are summarised below, together with an indication of the matters on which there was disagreement.

(a) Jeffrey did not take certain "O" level examinations which would normally have been taken by a pupil of his age before leaving school. The Government maintained that, at the time of his suspension in September 1976, he was not scheduled to do so, whereas he contended that he was, albeit in three subjects only.

(b) Subsequently, Jeffrey did not attend a further education establishment or night school. His parents alleged that this was because they had been told by an official of the local education authority that the suspension from school applied equally to such institutions; the Government, on the other hand, maintained that he could have applied for a place at either type of establishment and that his suspension would not have affected his acceptance for a course. The Government also suggested that he should make appropriate approaches to the Training Opportunities Scheme to seek enrolment on a training course of his choice which would be provided free of charge by the Government; he did not follow up this suggestion.

(c) Jeffrey registered with the local employment exchange on 11 June 1977. According to the Government, he was referred, during the following nine months, to eight potential employers for interview, attended on six occasions and was each time rejected without any information about his school record or suspension being given or requested; the applicant, however, stated that he received only two referrals, both of which proved fruitless as the job had already been filled, and claimed that his suspension was recorded in the material made available to the employment exchange.

(d) Jeffrey started a job on 13 March 1978, but left it - according to the Government, of his own accord - on 31 March. He attributed his leaving to the fact that he found himself working with persons of undesirable character and pointed out that the job was, in any event, scheduled to last for only six weeks.

(e) From May 1978 to May 1980, Jeffrey was not registered with the employment exchange. He said that during this period he firstly assisted his father, who was self-employed, and later attempted to work on his own account but was unsuccessful financially.

(f) Thereafter and until July 1982, Jeffrey was unemployed and registered, except from 19 May to 14 June 1980 when he held a job which he left - according to him - as a result of certain unacceptable conduct on the part of his employer.

(g) The applicant stated that he had been without work since July 1982, except for a period of three weeks when he was self-employed.

(h) The press publicity given to Jeffrey's suspension arose, at least in part, from an article in a local newspaper. The article originated in information supplied, according to the Government, by Mrs. Cosans or, according to the applicant, by her sister-in-law.

25. The Commission's Delegates recognised that the fact, asserted by the Government that in 1976 Jeffrey was not scheduled to take the above-

mentioned examinations was relevant as regards the level of any future employment. They also regretted that he had not reacted to the suggestion by the Government that he should seek enrolment on a training course which they would provide free of charge. However, the Delegates considered both in their initial and in their final observations, that Jeffrey's suspension negatively affected his career "to a measurable degree"; they saw his claim as comprising elements of material and moral damage, for both of which he was entitled to compensation in an amount to be determined by the Court.

26. The Court, in considering this claim, has not overlooked the fact that the incident which led to Jeffrey's suspension was the breach by him of the school's disciplinary rules. Nevertheless, his suspension from school was both out of proportion to the disciplinary offence committed and, as the Court found in its judgment of 25 February 1982, in violation of Article 2 of Protocol No. 1 (P1-2) to the Convention.

In the opinion of the Court, the applicant must be regarded as having suffered some non-pecuniary loss. In addition to initial mental anxiety, he must have felt himself to be at a disadvantage as compared with others in his age-group. Furthermore, his failure to complete his schooling perforce deprived him of some opportunity to develop his intellectual potential.

The extent to which Jeffrey suffered material damage is even more problematical. It is true that, in the normal course of events, an individual who has not had the full benefit of educational opportunities will be likely to encounter greater difficulties in his future career than one who has. On the other hand, the evidence suggests that, even had the suspension not occurred, Jeffrey's schooling would probably have led to no more than a limited qualification. Moreover, the entire responsibility for his situation cannot be attributed to the respondent State: Jeffrey does not appear to have pursued to the full the possibility of undertaking further study and training, and he did not react to the suggestion made by the Government in this connection (see paragraph 24, sub-paragraph (b), above). Again, whilst he did make some attempts to earn a living on a self-employed basis, he remained for a considerable period unregistered with the local employment exchange. Finally, it has to be recognised that in the current economic situation even many of those who have completed their education and training experience problems in finding employment. The Court therefore concludes that, whilst the suspension may well have contributed to the material difficulties which Jeffrey encountered, it cannot be regarded as the principal cause thereof.

One further factor to be taken into account is his entitlement, when unemployed, to social security benefits.

None of the above factors lends itself to a process of calculation. Taking them together on an equitable basis, as is required by Article 50 (art. 50),

the Court considers that the applicant should be afforded satisfaction assessed at £3,000.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares that Mrs. Campbell's claim for just satisfaction is inadmissible in so far as it seeks an undertaking from the United Kingdom Government;
2. Holds that the United Kingdom is to pay
 - (a) to Mrs. Campbell, in respect of legal costs and expenses referable to the proceedings before the Commission and the Court, the sum of nine hundred and forty pounds sterling (£940);
 - (b) to Mrs. Cosans, in respect of legal costs and expenses as aforesaid, the sum of eight thousand eight hundred and forty-six pounds sterling and sixty pence (£8,846.60) less two thousand three hundred French francs (2,300 FF) to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment;
 - (c) to Jeffrey Cosans, in respect of pecuniary and non-pecuniary loss, the sum of three thousand pounds sterling (£3,000);
3. Rejects the remainder of the applicants' claims.

Done in English and in French, the English text being authentic, at the Human Rights Building, Strasbourg, this twenty-second day of March, one thousand nine hundred and eighty-three.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar