



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

COURT (PLENARY)

CASE OF H. v. THE UNITED KINGDOM (ARTICLE 50)

(Application no. 9580/81)

JUDGMENT

STRASBOURG

9 June 1988

In the case of H 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. 9580/81) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission in 1981 by a British citizen.

* Note by the Registrar: The case is numbered 3/1986/101/149. 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 that the applicant had been the victim of breaches of Articles 6 § 1 and 8 (art. 6-1, art. 8) of the Convention by reason of the length of proceedings instituted by her regarding her access to her child, a ward of court committed to the care of a local authority (Series A no. 120-B, paragraphs 67-90 of the reasons and points 2 and 3 of the operative provisions, pp. 58-64).

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 8-62 of the principal judgment (*ibid.*, pp. 47-56).

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 91-92 of the reasons and point 4 of the operative provisions, pp. 64-65).

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

- on 8 September 1987, memorial of the applicant;
- on 21 December 1987, memorial of the Government;
- on 21 January 1988, observations of the Delegate of the Commission.

5. The Government's memorial and letters subsequently addressed to the registry by the Government and the applicant gave details of a settlement they had reached as regards the latter's claim in respect of costs and expenses referable to the proceedings before the Commission and the Court. She would accept, in full and final satisfaction of that claim, payment to her by the Government of £5,229.05, less the amounts received by her from the Council of Europe by way of legal aid.

6. 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

7. 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."

The applicant claimed under this provision compensation for damage and reimbursement of costs and expenses incurred in the proceedings before the Convention institutions.

A. Costs and expenses

8. Since delivering the principal judgment, the Court has been informed of a friendly settlement concluded between the Government and the applicant, concerning the claim for costs and expenses (see paragraph 5 above). Having regard to the terms of the settlement and to the absence of any objection on the part of the Commission's Delegate, the Court finds that the agreement is of an "equitable nature", within the meaning of Rule 53 § 4 of the Rules of Court. Accordingly, the Court takes note of the agreement and considers it appropriate to strike the case out of the list as far as that claim is concerned.

B. Damage

9. (a) The applicant claimed compensation, exemplary in amount, of £500,000 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 compensation was to cover various items, including the permanent loss of her relationship with her daughter A; the deprivation of the latter's love, companionship and support; her inability to have another child; the exacerbation of her illness; strain and distress occasioned by the nature and length of the litigation in England; and loss of earnings by her husband, who had allegedly been obliged to relinquish his employment in order to care for her.

(b) The Government argued that although certain of the alleged items of damage might have been the consequence of the applicant's loss of and lack of access to the child, they were not attributable to the breaches of Articles 6 § 1 and 8 (art. 6-1, art. 8), since there was no evidence that the outcome of the proceedings instituted by her with regard to access would have been different even if they had been concluded within a "reasonable time". 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 the facts of the case and in particular to the applicant's history, there was no evidence that, had the delays in those proceedings not occurred, the opportunities afforded to her therein could have genuinely 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.

10. 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 her. Violations of Articles 6 § 1 and 8 (art. 6-1, art. 8) were found solely on account of the duration of the proceedings in question (see the principal judgment, pp. 59-63, §§ 70-86, and pp. 63-64, §§ 87-90).

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

11. The Court agrees with the Government that it is not established that the applicant's inability to have another child and the exacerbation of her illness were due to the violations of the Convention. The same applies to the claim in respect of loss of earnings by her husband, which has not been pursued in any detail or even quantified.

12. As regards the applicant's loss of her relationship with her daughter and the deprivation of the latter's love, companionship and support, which she attributed to the breaches of the Convention, it cannot be affirmed with certainty that these matters would not have occurred if the relevant proceedings had been terminated more expeditiously. Indeed, it is noteworthy in this respect, as the Government pointed out, that in his report the Local Ombudsman expressed the opinion that it was "very unlikely indeed that the decision would have been different even if the [local authority] had acted more quickly" (see the principal judgment, p. 55, § 31).

13. On the other hand, the Court does not feel able to conclude that, as the Government submitted, a speedier conclusion of the proceedings in question could not have genuinely benefited the applicant in practical terms.

It is true that she allowed some seventeen months to elapse after the termination of her access to A (June 1977) before seeking its re-establishment by the High Court (November 1978). However, not only did she have a valid reason for this delay - namely, her desire to show that her health had improved and that she had a stable home - but also in November 1978 the child had not yet been placed for adoption, so that the process of "bonding" between her and her foster parents had not then begun (see the principal judgment, p. 50, §§ 18-19).

What is more problematical is that, of the various factors that contributed to the length of the proceedings, it was only the delay on the part of the local authority in filing its evidence which the European Court found to be open to criticism (*ibid.*, p. 62, § 84). However, but for this delay - without which that evidence would have been filed before A was placed for adoption in March 1979 (*ibid.*, pp. 50-51, §§ 18-21) -, the subsequent proceedings might have developed differently and been concluded earlier. The period during which "bonding" between A and her foster parents had been taking place would thus have been considerably reduced. The High Court, which had to base its decision on the facts as at the date of its hearing, took the view that the applicant's case had been "seriously prejudiced" by the delay in question (*ibid.*, p. 53, § 28). And, notwithstanding the applicant's earlier history, on which the Government relied, a particular feature of this case was the steady improvement in her condition following her meeting Mr. H in May 1977 and her subsequent marriage to him in October 1977 (*ibid.*, pp. 49, 50 and 53, §§ 14, 17 and 28). In these circumstances, it cannot, in the Court's opinion, be excluded that a prompter conclusion of the proceedings might have resulted in a different outcome.

To this extent the applicant may therefore be said to have suffered some loss of real opportunities, warranting monetary compensation.

14. In addition to the foregoing, the fact that the proceedings instituted by the applicant were drawn out for as long as two years and seven months, and that she saw her chances of success becoming more remote as time went by, must, in the Court's view, have left her with a feeling of frustration and helplessness, similarly warranting monetary compensation.

15. None of the factors cited in paragraphs 13 and 14 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides to strike the case out of the list as far as the applicant's claim for costs and expenses is concerned;
2. Holds that the United Kingdom is to pay to the applicant the sum of £12,000 (twelve thousand pounds) for non-pecuniary damage;
3. 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