



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

COURT (PLENARY)

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

(Application no. 9276/81)

JUDGMENT

STRASBOURG

9 June 1988

In the case of O 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. 9276/81) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission in 1980 by an Irish citizen.

* Note by the Registrar: The case is numbered 2/1986/100/148. 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 a breach of Article 6 § 1 (art. 6-1) of the Convention by reason of the insufficiency of the remedies available in connection with decisions relating to his children in the care of a local authority (Series A no. 120-A, paragraphs 52-64 of the reasons and point 2 of the operative provisions, pp. 23-28 and 30).

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 8-47 of the principal judgment (*ibid.*, pp. 10-22).

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 his 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 70-71 of the reasons and point 6 of the operative provisions, pp. 29-30).

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

- on 23 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 and the applicant subsequently informed the registry 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. He would accept, in full and final satisfaction of that claim, payment to him by the Government of £9,235.25.

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."

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. 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 its amount, of at least £100,000 for the consequences of the violation of Article 6 § 1 (art. 6-1) of the Convention found by the Court in the principal judgment. In his submission, those consequences included the break-up of his family and, in particular, the disruption of his relationship with his children A, B, C, D and E, which disruption, in the case of D and E, became permanent on their adoption; and the distress, anxiety and stress occasioned by the litigation in England and the limited nature of the remedies available to him.

(b) The Government argued that although the alleged damage might have been the consequence of the applicant's lack of access to A, B, C, D and E, it was not attributable to the breach of Article 6 § 1 (art. 6-1), since there was no evidence that the outcome would have been different if he had been able to have the question of his access to these children reviewed by a tribunal having jurisdiction to examine the merits of the matter. Consequently, no causal link had been demonstrated between the violation 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 the availability of a judicial remedy on the access issue could actually have

benefited the applicant in practical terms. Accordingly, he had not suffered a "loss of real opportunities", as that expression was understood in the Court's case-law, and the finding of violation of Article 6 § 1 (art. 6-1) 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 breach of Article 6 § 1 (art. 6-1) 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 children or the restriction or termination of the applicant's access to them. Furthermore, his allegation that the procedures followed by the local authority had given rise to a breach of Article 8 (art. 8) of the Convention was rejected (see the principal judgment, pp. 28-29, §§ 65-67). A violation - of Article 6 § 1 (art. 6-1) - was found solely on the ground of the non-availability of a judicial remedy on the merits of the access issue (*ibid.*, pp. 27-28, §§ 61-64).

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. As regards the break-up of the family and the disruption of his relationship with the children, which the applicant attributed to the breach of the Convention, it cannot be affirmed with certainty that these matters would not have occurred in the absence of the procedural deficiency in question. Even if, on that hypothesis, the applicant had succeeded in obtaining some measure of access to the children, it would by no means have followed automatically that they would have been restored to his care and, in particular, that D and E would not eventually have been adopted; as the Court pointed out in paragraph 62 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".

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

It is true that, in its judgment of 6 October 1980, the High Court took the view that the local authority had not acted unreasonably in deciding to refuse the applicant further access to the children (see the principal

judgment, p. 12, § 16). However, that decision was given in wardship proceedings, in circumstances where the High Court's jurisdiction was limited and did not extend to the merits of the matter. The Government also stated that the applicant had never applied for access to A, B and C under the provisions introduced by the Health and Social Services and Social Security Adjudications Act 1983 (*ibid.*, p. 21, § 44). However, those provisions would have been of doubtful utility to him: they did not enter into force until 30 January 1984, by which time he had had no access to these children for some four and a half years.

Furthermore, the different considerations involved mean, as the Court pointed out in paragraph 62 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 entirely excluded that if during the currency of the care orders the applicant had been able to have the question of his access to the five children reviewed by a court on its merits, he might have obtained some degree of satisfaction, especially if he had made his application at a sufficiently early date.

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

13. In addition to the foregoing, the fact that the applicant found himself unable, during the currency of the care orders, to refer the access issue to the courts on its merits must, in the Court's view, have left him with a certain feeling of frustration and helplessness, similarly warranting monetary compensation.

14. None of the factors cited in paragraphs 12 and 13 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 £5,000 for damage sustained.

C. Miscellaneous

15. The applicant also sought a finding by the Court to the effect that the current child-care law in England and Wales was still not satisfactory in certain respects.

This, however, is a matter which falls outside the scope of the case submitted to the Court on 28 January 1986, with the result that it cannot entertain this request.

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 £5,000 (five 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