



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

COURT (CHAMBER)

**CASE OF SILVER AND OTHERS v. THE UNITED KINGDOM
(ARTICLE 50)**

*(Application no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75;
7136/75)*

JUDGMENT

STRASBOURG

24 October 1983

In the case of Silver and others,

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. G. WIARDA, *President*,

Mr. Thór VILHJÁLMSSON,

Mr. F. GÖLCÜKLÜ,

Mr. F. MATSCHER,

Mr. L.-E. PETTITI,

Sir Vincent EVANS,

Mr. C. RUSSO,

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

Having deliberated in private on 23 September 1983,

Delivers the following judgment, which was adopted on that 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 March 1981 by the European Commission of Human Rights ("the Commission"). The case originated in seven applications (nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/75) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on various dates between 1972 and 1975 by Mr. Reuben Silver, Mr. Clifford Dixon Noe, Mrs. Judith Colne, Mr. James Henry Tuttle, Mr. Gary Cooper, Mr. Michael McMahon and Mr. Desmond Roy Carne.

2. By judgment of 25 March 1983, the Court held that the stopping by the prison authorities of a number of letters written by or addressed to the applicants had given rise to violations of Articles 8 and 13 (art. 8, art. 13) of the Convention. It also held that the refusal of a petition by Mr. Silver for permission to seek legal advice had constituted a breach of Article 6 § 1 (art. 6-1) (Series A no. 61, paragraphs 80-105 and 111-119 of the reasons and points 1, 2 and 5 of the operative provisions, pp. 31-45).

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

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

details; for further particulars, reference should be made to paragraphs 9-71 of the above-mentioned judgment (*ibid.*, pp. 9-28).

3. In a memorial filed on 22 September 1982, the applicants had claimed, as just satisfaction under Article 50 (art. 50), "general" damages for violation of their rights and reimbursement of specified costs and expenses; a claim for "special" damages had also been put forward in the names of Mr. Silver, Mr. McMahon and Mr. Carne.

The Government of the United Kingdom ("the Government") had replied in writing to the said memorial on 14 January 1983.

In its judgment of 25 March 1983, the Court reserved the question of the application of Article 50 (art. 50), the written procedure on that issue not then having been concluded (paragraphs 120-122 of the reasons and point 6 of the operative provisions, pp. 44-45).

4. In accordance with the Orders and directions of the President of the Chamber, the registry subsequently received the following documents:

(a) on 9 March 1983, letter of 8 March from the Secretary to the Commission, with which was enclosed a further memorial of the applicants;

(b) on 10 May 1983, comments of the Government on the last-mentioned memorial;

(c) on 17 May and 1 June 1983, from the Secretary to the Commission, copies of letters of 18 April and 25 May which he had received from the applicants' lawyers.

In his letter of 8 March, the Secretary to the Commission indicated that its Delegates had no observations on the issues arising under Article 50 (art. 50), considering them to be matters to be left to the Court's judgment. Further particulars of the applicants' claims and of the Government's position relative thereto are set out below in the section "As to the law".

5. Having consulted, through the Registrar, the Agent of the Government and the Delegates of the Commission, the Court decided on 23 September 1983 that there was no call to hold hearings.

AS TO THE LAW

I. INTRODUCTION

6. 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."

7. The applicants sought just satisfaction under a number of different heads. Their various claims will be considered in turn.

II. "GENERAL" DAMAGES

8. The applicants claimed in the first place "general" damages for the violation of their Convention rights, alleging that they had been caused very great distress. They emphasised such factors as the scale of the breaches that had occurred - amounting in their view to a practice in breach of the Convention - and the absence of any domestic remedy, their complaints about censorship having themselves been censored. They submitted that in general a finding of violation contained in a judgment of the Court could not, of itself, be considered to amount to just satisfaction, and did not do so in the present case.

The Government's principal plea was that here an award of "general" damages was neither necessary nor appropriate, the Court's judgment of 25 March 1983 itself constituting just satisfaction. They pointed out that only a small proportion of the applicants' mail had been stopped and stressed the significant changes that had been made, in the light of the Commission's report in this case, to the practice in England and Wales on the control of prisoners' correspondence.

9. The Court would recall that under Article 50 (art. 50) just satisfaction will be afforded only "if necessary" (see, *inter alia*, the Dudgeon judgment of 24 February 1983, Series A no. 59, p. 7, § 11). In exercising the discretion thus conferred on it, the Court will have regard to what is equitable in all the circumstances of the case.

10. It is true that those applicants who were in custody may have experienced some annoyance and sense of frustration as a result of the restrictions that were imposed on particular letters. It does not appear, however, that this was of such intensity that it would in itself justify an award of compensation for non-pecuniary damage. As the figures supplied by the Government reveal (see the above-mentioned judgment of 25 March 1983, p. 24, § 57), the number of letters in respect of which the Court found a violation as regards each of the applicants was very small compared with the number of letters which they were allowed to send. Furthermore, although the Court held that it could not examine the compatibility with the Convention of the correspondence control regime in force since 1981 (*ibid.*, p. 31, § 9), substantial changes were introduced as a result of the applications in which this case originated and do appear in principle to have led to a significant improvement.

In these circumstances, the Court considers that in relation to this head of claim the judgment of 25 March 1983 constitutes in itself adequate just

satisfaction for the applicants concerned, without it being necessary to afford financial compensation (see, as the most recent authority, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 14, § 35). The same applies a fortiori to Mrs. Colne, who was not in custody and was thus not subject to the constraints of prison life.

III. "SPECIAL" DAMAGES

A. Mr. Silver

11. An unquantified claim for "special" damages was put forward in the name of Mr. Silver. It was maintained that the stopping of his letters, which dealt with matters of intimate concern such as medical treatment and diet, had caused him great distress and adversely affected his health.

The Government contended on various grounds that there was no basis for this claim and that, in any event, the absence of evidence of material loss rendered an award inappropriate.

12. Mr. Silver died in March 1979, while his case was pending before the Commission. The injury alleged under this head was of a purely personal nature, involved no element of material damage and did not affect his estate. His next of kin are not seeking compensation, as "injured parties" in their own right, for any mental suffering caused to them. In the particular circumstances, the Court considers that the cause of justice does not require an award of a sum of money to be received by them in compensation for any mental distress that Mr. Silver might have suffered by reason of the breaches of Articles 6 § 1, 8 and 13 (art. 6-1, art. 8, art. 13) (see, *mutatis mutandis*, the X v. the United Kingdom judgment of 18 October 1982, Series A no. 55, p. 16, § 19).

B. Mr. McMahon

13. Throughout his detention Mr. McMahon protested that he was innocent of the crime for which he had been imprisoned, and a campaign was mounted on his behalf. The remainder of his sentence was remitted and he was released in 1980 after the publication in that year of a book concerning his case.

According to the applicant, the book contained material written by him and smuggled out of his prison in 1977. It was alleged that his eleven letters which had been stopped (see the above-mentioned judgment of 25 March 1983, p. 12, § 22) were all directed to enlisting support or obtaining fresh evidence for his campaign and that, had he been able to correspond freely, he might have secured earlier reconsideration of his case and earlier release;

he claimed "special" damages of £4,500 for wrongful imprisonment for a period estimated at one year.

The Government contended that there was no basis for the claim. They did not accept that the outcome of the proceedings to obtain Mr. McMahon's release would have been any different had the letters been allowed to be sent.

14. The Court notes that the applicant himself did not attribute his release solely to the appearance of the book but rather to a combination of its publication and of outside pressures. Furthermore, perusal of those of the eleven letters whose text is available reveals that they did not contain new material but were in the main designed to seek further support for an already existing campaign.

In these circumstances, the Court is not persuaded that the stopping of the letters in question did in fact delay Mr. McMahon's release. It therefore rejects this claim.

C. Mr. Carne

15. In 1976, Mr. Carne had been subjected to prison disciplinary penalties in respect of two clandestine letters, addressed respectively to Dr. Owen and the National Council for Civil Liberties, purporting to come from other persons but in fact written by him. He alleged that had his letters nos. 54 and 55, to the same respective addressees, not been stopped by the prison authorities (see the above-mentioned judgment of 25 March 1983, pp. 27-28, §§ 67 and 68), the clandestine communications - which concerned the same subjects as the stopped letters - would not have been written, in which event he would not have incurred the penalties. He claimed £750 in respect of the "special" damages thereby occasioned.

The Government denied that the various letters dealt with the same matters and contended that there was no basis for this claim; in any event, an award would not be appropriate as no material loss had been shown.

16. The Court observes that whilst the subject-matter of the letters in question was not identical, there were certain common features: censorship of correspondence and medical treatment were mentioned in both letters addressed to Dr. Owen and the former matter was referred to in both communications to the National Council for Civil Liberties. The fact that Mr. Carne was unable to write without restriction on these subjects may have been one reason for the fabrication of the clandestine letters. However, whatever Mr. Carne's motives may have been, the subterfuge to which he resorted nevertheless constituted a transgression of the prison regulations which, in this respect, have not been found by the Court to be incompatible with the Convention.

Having regard to all the circumstances, the Court considers that it is not necessary to make an award in respect of this claim.

IV. COSTS AND EXPENSES

17. The applicants claimed in respect of costs and expenses which they were liable to pay in connection with the proceedings before the Convention institutions the following sums (in each case exclusive of value added tax):

(a) £17,093.63 - including £750 for services rendered in connection with the Article 50 (art. 50) claim - for the fees and disbursements of Messrs. Bindman & Partners, solicitors, who initially acted for Mrs. Colne, Mr. McMahon and Mr. Carne before the Commission and subsequently had primary responsibility for the conduct of the seven joined applications before the Commission and the Court;

(b) £16,250 for the fees of Mr. Anthony Lester, Q.C., and Mr. Michael Beloff, Q.C., who also represented the applicants before the Commission and the Court;

(c) £780 for the fees and disbursements of Messrs. Friedman, Fredman & Co., solicitors, who represented Mr. Tuttle before the Commission and the Court;

(d) £1,540 for the fees and disbursements of Messrs. Hughmans, solicitors, who represented Mr. Silver (or his next of kin), Mr. Noe and Mr. Cooper before the Commission and the Court.

Items (a) and (b) were subject to deduction of the amounts which the applicants had received by way of free legal aid before the Commission and, after reference of the case to the Court, in their relations with the Commission's Delegates; items (c) and (d), on the other hand, represented costs and expenses that were not covered by that legal aid.

18. The Court will apply the various criteria which emerge from its case-law on the subject, as regards the purpose for which the costs in question were incurred and the requirements that they be actually incurred, necessarily incurred and reasonable as to quantum (see, as the most recent authority, the above-mentioned Zimmermann and Steiner judgment, Series A no. 66, p. 14, § 36). In this connection the Court wishes to reiterate the comments made in its Young, James and Webster judgment of 18 October 1982 (Series A no. 55, p. 8, § 15), where it observed:

"... high costs of litigation may themselves constitute a serious impediment to the effective protection of human rights. It would be wrong for the Court to give encouragement to such a situation in its decisions awarding costs under Article 50 (art. 50). It is important that applicants should not encounter undue financial difficulties in bringing complaints under the Convention and the Court considers that it may expect that lawyers in Contracting States will co-operate to this end in the fixing of their fees."

19. The Government indicated that they were prepared to pay the reasonable and necessary costs actually incurred by the applicants which were not covered by the Commission's legal aid. With the exception of the points mentioned in paragraph 20 below, the Government did not contest

that the applicants had incurred liability for costs additional to those covered by their legal aid (cf., *inter alia*, the Airey judgment of 6 February 1981, Series A no. 41, p. 9, § 13) and that their claim satisfied the criteria referred to in paragraph 18 above. Subject to an examination of those points, the Court therefore retains the whole of the claim.

20. (a) The Government drew attention to an error in the calculation of the fees of Messrs. Bindman & Partners in respect of certain letters. That firm having admitted the error, the fees in question are to be reduced by £40.

(b) The Government claimed that Messrs. Bindman & Partners had charged fees for an excessive number of hours of work.

These solicitors have charged for a total of 294 hours of work, up to 1982. Bearing in mind that they had the primary responsibility for the conduct of a complex case which involved seven joined applications and by 1982 had lasted, as far as they were concerned, for some seven years, the Court does not consider this figure excessive.

(c) The Government contended that the same firm had charged at an excessive hourly rate (£40) and that a figure of £35 would be more appropriate. They referred in particular to the heavy reliance that had been placed on counsel and the fact that, in the early stages, the case had been handled by persons who were not partners in the firm. The applicants cited in support of their claim advice which they had received from professional law costs draftsmen.

The Court sees no reason to conclude that on this occasion greater reliance was placed on counsel than is customarily done when solicitors and barristers are instructed in contentious business. With regard to the hourly rate charged, the Court considers that £35 is the maximum which it should allow.

(d) The Government maintained that the sum of £62.06, for certain travel expenses in London, should be deducted from the amount claimed in respect of the disbursements of Messrs. Bindman & Partners, since in England such items would not be allowed under the relevant Supreme Court Taxing Office Practice Direction.

Although the Court is not bound by this Direction (see, *mutatis mutandis*, the Eckle judgment of 21 June 1983, Series A no. 65, p. 15, § 35), it agrees that these local travel expenses should not be allowed.

(e) The Government submitted that the fees charged by counsel were excessive and should be reduced by a total of £5,100. Domestic practice was referred to by the Government to support, and by the applicants to contest, this submission. The applicants also cited the award of £10,000 in respect of counsel's fees contained in the Court's Sunday Times judgment of 6 November 1980 (Series A no. 38, p. 15, § 30).

Here again, parallels drawn with domestic practice do not bind the Court, although they may assist it. Having regard to all the circumstances of the

case - which, as the applicants rightly pointed out, was a test case raising issues of major importance for all prisoners and generating substantial documentation -, the fees in question, with the exception of the brief fees for appearance before the Court, cannot be regarded as out of proportion or excessive for the work involved. As regards the brief fees, the Court considers that £2,000 for Mr. Lester and £1,000 for Mr. Beloff would be reasonable.

(f) The Government contended that in any event there should be excluded Mr. Lester's fees referable to the friendly settlement negotiations, on the ground that this work could have been done by the solicitors alone. The applicants stressed that the negotiations, at which the Government were very fully represented, covered consideration of far-reaching modifications to the system of control of prisoners' correspondence.

During the proceedings before the Court, the Government themselves emphasised the significance of the changes made as a result of the applications in which the present case originated. The scale of those changes can be gauged from paragraphs 25 to 56 of the Court's above-mentioned judgment of 25 March 1983 (pages 12-23). The Court entertains no doubt that in the circumstances the participation of counsel with experience in the matter was of great importance. It therefore rejects the Government's plea.

(g) Finally, the Government maintained that the sum of £180 claimed in respect of the disbursements of Messrs. Friedman, Fredman & Co. should be disallowed as it had not been particularised. The applicants stated that this sum related to travel and accommodation expenses in connection with the hearing before the Commission in 1978, the exact breakdown of which was no longer available.

In the absence of further particulars, the Court disallows this item.

21. The costs and expenses accepted by the Court total £31,661.57, from which has to be deducted the sum of 34,692.64 FF (to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment) which the applicants have received from the Commission by way of legal aid in respect of the fees and disbursements of Messrs. Bindman & Partners and the fees of Mr. Lester and Mr. Beloff. The resulting figure is to be increased by any value added tax that may be due.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the United Kingdom is to pay, in respect of the applicants' costs and expenses referable to the proceedings before the Commission and the Court, the sum resulting from the calculations to be made in accordance with paragraph 21 of the judgment;

2. 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-fourth day of October, one thousand nine hundred and eighty-three.

Gérard WIARDA
President

Marc-André EISSEN
Registrar

A declaration by Mr. Thór Vilhjálmsson is annexed to the present judgment.

G.W.
M.-A.E.

DECLARATION OF JUDGE THÓR VILHJÁLMSSON

In a judgment delivered on 18 October 1982 in the case of X v. the United Kingdom (Article 50) (art. 50), the majority of the Court rejected a claim put forward on behalf of the estate of the deceased applicant. I was then in a minority of one. In my opinion the estate was, in the circumstances of that particular case, entitled to compensation.

One of the points decided in the present case concerns a claim made on behalf of the next of kin of Mr. Silver, who died in 1979, for "special" damages (see paragraphs 11-12 of the judgment). My vote on this particular point reflects a change from my vote in the case of X v. the United Kingdom (Article 50) (art. 50). This change is prompted by the majority vote in that case.