



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

COURT (PLENARY)

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

(Application no. 6538/74)

JUDGMENT

STRASBOURG

6 November 1980

In the Sunday Times case,

The European Court of Human Rights, taking its decision in plenary session in application of Rule 48 of the Rules of Court and composed of the following judges:

Mr. G. BALLADORE PALLIERI, *President*,
 Mr. G. WIARDA,
 Mr. H. MOSLER,
 Mr. M. ZEKIA,
 Mr. J. CREMONA,
 Mr. W. GANSHOF VAN DER MEERSCH,
 Sir Gerald FITZMAURICE,
 Mrs. D. BINDSCHEDLER-ROBERT,
 Mr. D. EVRIGENIS,
 Mr. P.-H. TEITGEN,
 Mr. G. LAGERGREN,
 Mr. L. LIESCH,
 Mr. F. GÖLCÜKLÜ,
 Mr. F. MATSCHER,
 Mr. J. PINHEIRO FARINHA,
 Mr. E. GARCIA DE ENTERRIA,

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

Having deliberated in private on 3 and 4 June and on 29 and 30 September 1980,

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 Sunday Times case was referred to the Court by the European Commission of Human Rights ("the Commission") in July 1977. The case originated in an application against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission in 1974 by Times Newspapers Limited, the publisher of the British weekly newspaper The Sunday Times, by Mr. Harold Evans, the latter's editor, and by The Sunday Times as a group of journalists, composed of Mr. Evans himself, Mr. Bruce Page, Mr. Philip Knightley and Ms. Elaine Potter.

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 to 37 of the Court's judgment of 26 April 1979 (Series A no. 30, pp. 8-27).

2. By that judgment, the Court held, *inter alia*, that there had been a breach of Article 10 (art. 10) by reason of an injunction granted against Times Newspapers Limited in accordance with the English law of contempt of court but no breach of Article 14 (art. 14) (points 1 and 2 of the operative provisions and paragraphs 42-73 of the reasons, *ibid.*, pp. 45 and 28-43).

During the proceedings on the merits, the applicants, without quantifying their claim, had requested the Court to declare, in application of Article 50 (art. 50), that the Government of the United Kingdom ("the Government") should pay to them a sum equivalent to the costs and expenses which they, the applicants, had incurred in connection with the contempt litigation in the English courts and the proceedings before the Commission and the Court. The Court reserved the whole of the question of the application of Article 50 (art. 50). Those appearing before the Court were invited to notify it, within three months from the delivery of the judgment, of any settlement at which the Government and the applicants might have arrived (point 4 of the operative provisions and paragraphs 76-78 of the reasons, *ibid.*, pp. 44-45).

3. By letters of 18 and 31 July 1979, the Deputy Agent of the Government and the Deputy Secretary to the Commission advised the Registrar that no settlement had been arrived at.

4. In accordance with Orders of the President (3 August, 11 October and 17 December 1979) and a decision of the Court (27 February 1980), the following documents were filed with the registry:

- on 10 October 1979, observations of the applicants, transmitted by the Commission's Delegates;
- on 14 December 1979, memorial of the Government;
- on 21 February 1980, observations of the Delegates, together with the applicants' observations on the Government's memorial;
- on 18 April 1980, supplementary memorial of the Government.

5. Having consulted, through the Registrar, the Deputy Agent of the Government and the delegates of the Commission, the Court decided on 29 April 1980 that there was no call to hold oral hearings.

On 30 May 1980, the Secretary to the Commission, acting on the Delegates' instructions, transmitted to the registry some comments by the applicants on the Government's supplementary memorial which they had sent to him on their own initiative. On 3 June, the Court decided, on the ground that the case was already ready for decision, not to take this document into account and, accordingly, not to communicate it to the Government.

6. The applicants' claim may be summarised as follows:

(a) for the litigation in the English courts ("the English costs"): 15,809.36 pounds;

(b) for the proceedings before the Commission and the Court ("the Strasbourg costs"):

- 24,760.53 pounds up to the delivery of the judgment of 26 April 1979;
- an additional amount in respect of the Article 50 (art. 50) proceedings;
- (c) interest at 10% per annum on the sums awarded.

There was appended to the applicants' observations of 10 October 1979 a schedule with particulars of the quantified items, incurred since October 1972. For ease of reference, relevant details are included below in the section "As to the law".

7. The costs of the litigation in England had been the subject of certain "without prejudice" correspondence. On 8 June 1973 the Legal Adviser to Times Newspapers Limited had written to the Treasury Solicitor as follows:

"... I am writing to you now to see whether the matter of costs could be dealt with by agreement, thus avoiding any argument at the resumed hearing, when judgment is given.

I do not think you will be surprised to hear that we expect the House of Lords to find in favour of the Attorney-general ...

In normal circumstances it would be difficult to resist the argument that costs should follow the event, but I venture to suggest that there are a number of features about the present case which would justify a departure from the normal rule ..."

There followed a list of circumstances surrounding the litigation in the English courts, together with an assertion that The Sunday Times had acted "with great restraint and responsibility" and had "frequently subordinated its private interest to the more general public interest".

The letter concluded:

"... we ... base our suggestion that it should be agreed that, in the event of a judgment by the House of Lords in favour of the Attorney-General, there should be an agreed Order that each side pay their own costs, both in the House of Lords and in the courts below, on the ... grounds which I have outlined above."

The Deputy Treasury Solicitor had replied on 15 June 1973:

"I have obtained the instructions of the Attorney-General on your letter of the 8th June. He considers that each party should bear their own costs of all the proceedings, whatever the outcome of the appeal to the House of Lords."

8. On 25 July 1973, that is one week after giving judgment on the merits in favour of the Attorney-General, the House of Lords ordered: "That, by consent, each party do bear and pay their own costs here and below." Counsel for the Attorney-General had pointed out that "in the ordinary way the Attorney-General would have asked for costs" but that, in the circumstances, it had "been agreed that each party should pay their own costs"; no observations had been added on behalf of Times Newspapers Limited.

9. In English law, a litigant must bear his own costs unless the court otherwise orders. An award of costs lies within the discretion of the court but, as a general rule and in the absence of special factors, "costs follow the event": the unsuccessful party will be ordered to pay to his opponent the latter's costs, although the actual amount recoverable will be assessed by the court and will very rarely cover the full expenditure. There is jurisdiction to award costs against a successful party but it is exercisable only in the most exceptional circumstances (see *Knight v. Clifton* [1971] 2 All England Law Reports 378).

10. An order by consent made by an English court is not a contract, but it is sufficient evidence of the contract upon which it is based. Such an order, like the contract which it evidences, is not necessarily to be read literally but is to be construed in the light of any admissible evidence of surrounding circumstances, including evidence as to the nature of the dispute compromised by the order (per Mr. Justice Plowman and, on appeal, per Lord Justice Donovan in *General Accident Fire and Life Assurance Corporation v. Inland Revenue Commissioners* [1963] All England Law Reports, vol. 1 at 627 and vol. 3 at 261).

FINAL SUBMISSIONS MADE TO THE COURT

11. The Government invited the Court:

"(1) to hold that just satisfaction does not in the circumstances of this case require the award against the United Kingdom of any costs or expenses incurred by the applicants in the domestic courts or before the Commission or Court;

alternatively

(2) (a) to hold that no part of the costs incurred by the applicants in the English courts should be awarded under Article 50 (art. 50) on the grounds

i) that such an award would be contrary to the express agreement reached between the applicants and the Attorney-General of England and made at the express request and for the exclusive benefit of the applicants;

(ii) that such costs were in any event not necessarily incurred by the applicants for the purpose of establishing a breach of the Convention;

(b) to hold that only those costs which were necessarily incurred by the applicants in establishing the breach of Article 10 (art. 10) of the Convention are recoverable and, in particular, to deny costs incurred in advancing submissions which were rejected by the Commission and by the Court;

(3) to hold that any costs awarded should in any event not exceed a sum calculated by reference to the current rates payable under the scheme for free legal aid operated by the Commission."

The Delegates of the Commission, for their part, submitted that "the finding of a violation in this case does not in itself constitute a 'just satisfaction' but that the applicants should be awarded a monetary satisfaction on the basis of any moral damage suffered by the applicants and the necessary legal expenses incurred by them".

AS TO THE LAW

I. GENERAL ASPECTS

12. Article 50 (art. 50) of the Convention 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."

13. No question was raised before the Court as to the applicability of this provision in the present case.

In fact, each of the applicants is clearly an "injured party" – a phrase synonymous with the term "victim" as used in Article 25 (art. 25) – in the sense that they were persons directly affected by the decision held by the Court in its judgment of 26 April 1979 to be in conflict with the obligations arising from the Convention (see the *De Wilde, Ooms and Versyp* judgment of 10 March 1972, Series A no. 14, p. 11, par. 23).

Again, it has not been suggested that English law allows complete reparation to be made for the consequences of the decision. In any event, as the Commission's Delegates pointed out, the intrinsic nature of the wrong – an interference with freedom of expression – prevents such reparation (see, *mutatis mutandis*, the *König* judgment of 10 March 1980, Series A no. 36, p. 14, par. 15).

14. The Delegates, whilst considering that there was now no room to have regard to the head of material damage, expressed the view that, on principle, some monetary compensation was called for in respect of the moral damage suffered by the applicants. This was contested by the Government.

It is true that the applicants' submissions contained some references to material and moral damage allegedly suffered. Nevertheless, not only was the claim under Article 50 (art. 50), when originally formulated, confined to costs and expenses (see paragraph 2 above and paragraph 78 of the judgment of 26 April 1979) but also, in their observations of 10 October

1979, the applicants expressly stated that their request for just satisfaction was so limited.

In the context of Article 50 (art. 50), the Court normally looks only to the items actually claimed (see, for example, the *Deweert* judgment of 27 February 1980, Series A no. 35, pp. 31-32, par. 59-60) and, since no question of public policy is involved, will not of its own motion consider whether the applicant has been otherwise prejudiced. The Court accordingly concludes that the claim for costs and expenses is the only matter arising for its determination in the present case.

15. The applicants contended that here there was no reason to depart from the general English rule that "costs follow the event" (see paragraph 9 above).

The Court concurs with the Delegates' view that it is not applying a domestic rule if it accepts under Article 50 (art. 50) a claim in respect of costs. As the Government pointed out, the injured party is not entitled to his costs as of right: "just satisfaction" is to be afforded "if necessary" and the matter falls to be determined by the Court at its discretion, having regard to what is equitable.

16. As their principal submission, the Government maintained that in the circumstances of the case Article 50 (art. 50) did not require the award against the United Kingdom of any of the English or Strasbourg costs. They relied on previous decisions by the Court to the effect that the finding of a violation may of itself constitute "just satisfaction" (*Golder* judgment of 21 February 1975, Series A no. 18, pp. 22-23, par. 46; *Engel and others* judgment of 23 November 1976, Series A no. 22, p. 69, par. 11; *Marckx* judgment of 13 June 1979, Series A no. 31, p. 29, par. 68).

The Court considers it right to distinguish here, as it did in the *Neumeister* case (judgment of 7 May 1974, Series A no. 17, pp. 20-21, par. 43), between damage caused by a violation of the Convention and costs necessarily incurred by the applicant. The decisions referred to by the Government all related to claims in respect of the former item, whereas the Court's general practice has been to accept claims in respect of the latter (see the above mentioned *Neumeister*, *Deweert* and *König* judgments). In fact, it is, difficult to imagine that the finding of a violation could of itself constitute just satisfaction as regards costs.

The Government listed in support of their submission a number of "special features" of the present case. One of them (an alleged agreement between the parties - see paragraph 7 above) concerns solely the English costs and another (the fact that some expenses were accounted for by unsuccessful submissions) solely the Strasbourg costs; the Court examines these points in paragraphs 19-22 and 27-28 below and confines itself at this stage to the remaining arguments.

Firstly, the English proceedings were said to be the result of "joint co-operation", the applicants having "welcomed" the opportunity of having the

matter tested in court. If the implication was that they accepted the risk of bearing the costs referable to a matter known to be of uncertain outcome, the Court would point out that a very substantial amount of litigation has this character and yet this does not prevent the successful party from being awarded his costs in many of the Contracting States' legal systems. Moreover, it is doubtful to what extent the applicants can be regarded as willing litigants. Short of renouncing publication of the contentious article - a course they would clearly have found repugnant-, the only alternative to the English proceedings would, as they observed, have been to publish and run the risk of incurring the severe sanctions attaching to contempt of court. In addition, this feature has no bearing on the Strasbourg costs.

Secondly, the Government emphasised that the injunction ordered by the House of Lords was limited in scope and duration and was, moreover, discharged on 23 June 1976. However, this does not alter the fact that, for nearly three years, the applicants were deprived, in conditions at variance with Article 10 (art. 10), of some part of their freedom of expression.

Thirdly, the Government referred to their promise to introduce legislation amending the law of contempt of court and to the small majorities by which both Commission and Court arrived at their conclusions. However, these features are not relevant for the examination of the present claims: the Contracting States concerned are in any event under an obligation to adjust their domestic law to the requirements of the Convention and no consequence in law attaches to the size of the majority by which, in accordance with the relevant provisions (Articles 34 and 51 par. 2 of the Convention and Rule 20 par. 1 of the Rules of Court) (art. 34, art. 51-2), Commission and Court arrive at their decisions.

The Court does not perceive circumstances such as to warrant a departure in the present case from its general practice and accordingly rejects the Government's principal submission.

II. THE ENGLISH COSTS

17. The Government submitted in the alternative that no award should be made in respect of the English costs since

- they were not incurred for the purpose of challenging or establishing a breach of the Convention, none having occurred until the decision of 18 July 1973 of the House of Lords;

- "such an award would be contrary to the express agreement reached between the applicants and the Attorney-General of England and made at the express request and for the exclusive benefit of the applicants" and it "would be wrong to permit the applicants to shirk" from that agreement.

18. As regards the first point, the Court confines itself to noting that the costs in question were incurred by the applicants in an endeavour to assert their freedom of expression, a right which is guaranteed by the Convention.

Moreover, the English proceedings as a whole were a necessary precondition to the reference of the matter to the Commission (Article 26 (art. 26); see the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 29, par. 50, and the Airey judgment of 9 October 1979, Series A no. 32, pp. 10-11, par. 18).

19. As regards the second point, the Government maintained that the costs of the litigation in England had been the subject of an agreement whose effect was twofold: Times Newspapers Limited was not only relieved of the obligation to pay the Attorney-General's costs but it also accepted to bear its own costs and not to look to the Attorney-General for any part thereof. This was said to appear from the letters exchanged between the parties and the subsequent proceedings in the House of Lords.

The applicants did not deny the existence of an agreement but submitted that:

- it did not relate to their own costs at all but only to those of the Attorney-General: there was no reason whatever for them to "agree" to bear the former costs which they were anyway bound to pay as the losing party;
- its only effect was to reduce the amount of their claim under Article 50 (art. 50): if they had not applied for a concession and thereby minimised their expenditure, they would have paid, and would now be seeking compensation in respect of, the Attorney-General's costs as well;
- in any event, they never agreed not to claim, before the Convention institutions, reimbursement of the English costs.

The Commission's Delegates considered that the agreement was "relevant" for the Court's assessment as to what domestic costs, if any, should be taken into account.

20. As the Delegates observed, the letters in question were not in identical terms (see paragraph 7 above). Times Newspapers Limited asked whether, should its expectation of an unfavourable decision from the House of Lords prove correct, the Attorney-General would by way of concession be prepared to depart from the usual English rule entitling him to his costs (see paragraph 9 above). The reply, however, was to the effect that the Attorney-General considered that each party should bear his own costs, "whatever the outcome".

Although this exchange of letters does not in itself provide sufficient evidence of the creation of a binding agreement, the subsequent attitude of the parties shows that they considered that such an agreement had nevertheless been achieved. This appears from the Order of the House of Lords "that, by consent, each party do bear and pay their own costs", which Order was based on the statement by counsel for the Attorney-General that it had "been agreed that each party should pay their own costs" (see paragraph 8 above).

Also, in their observations submitted to this Court, the applicants did not deny that an agreement had in fact been concluded on the subject. The

difference of opinion concerned solely the scope of this agreement: according to the applicants, it related only to the costs of the Attorney-General; according to the Government, it related to the costs of Times Newspapers Limited as well and applied "whatever the outcome".

21. In the opinion of the Court, the Government's point of view is the more plausible.

The original proposal by Times Newspapers Limited - that "it should be agreed that, in the event of a judgment by the House of Lords in favour of the Attorney-General, there should be an agreed Order that each side pay their own costs" - was accepted by the Attorney-General only on terms that the agreement be reciprocal, that is applicable "whatever the outcome of the appeal to the House of Lords".

It does not appear, and seems improbable, that the Attorney-General subsequently changed his position. The fact that according to both parties an agreement was nevertheless reached leads to the conclusion that after the exchange of letters Times Newspapers Limited as well took it for granted that each party should pay their own costs "whatever the outcome"; this is all the more probable because Times Newspapers Limited, as is shown by the letter from its Legal Adviser to the Treasury Solicitor, expected the House of Lords to find in favour of the Attorney-General and so cannot have found it very difficult to acquiesce in the latter's point of view.

22. Even if, as the applicants submitted, proceedings before the Convention institutions were not in the contemplation of the parties at the relevant time, the Court considers that, as a consequence of the above-mentioned agreement - which was freely entered into and was applied by the Order of the House of Lords - it is not appropriate to include the English costs in any "satisfaction" under Article 50 (art. 50), the issue of costs having been settled once and for all by each party paying his own.

III. THE STRASBOURG COSTS

23. According to the Court's case-law, costs and expenses will not be awarded under Article 50 (art. 50) unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see, inter alia, the above-mentioned Neumeister judgment, pp. 20-21, par. 43, and the above-mentioned König judgment, pp. 18-19, par. 24-26).

1. Were the costs actually incurred?

24. The applicants did not have the benefit of free legal aid before the Commission and in their relations with the Delegates (cf. the Luedicke, Belkacem and Koç judgment of 10 March 1980, Series A no. 36, p. 8, par. 15, and the Artico judgment of 13 May 1980, Series A no. 37, p. 19, par. 40). More generally, with one exception, neither Government nor

Commission suggested that any of the Strasbourg costs had not been actually incurred: in the absence of any evidence to the contrary, the Court sees no need to call for vouchers in respect of the remaining items.

25. The exception referred to is a sum of 7,500 pounds in respect of work done between 1974 and 1979 by Mr. Whitaker, as agent for the applicants and Legal Manager of Times Newspapers Limited, in settling memorials, preparing for and attending at the hearing before the Commission and instructing counsel for the hearing before the Court. The Commission's Delegates expressed "considerable doubts" about this item, questioning whether it was actually incurred since the said activities appeared to belong to the normal functions of a company's legal manager and to be covered by his ordinary remuneration. The Government subsequently agreed that a question of principle was involved but, without accepting that this was necessarily relevant, drew the Court's attention to the fact that under English practice the costs recoverable by a successful litigant would include at least part of those referable to the services of a salaried solicitor.

In the absence of any evidence, the Court must assume that the activities in question were indeed covered by Mr. Whitaker's ordinary remuneration. However, if an employee, by devoting his time to particular litigation, does work of a kind which would otherwise be done by independent lawyers, it is in general reasonable to consider the part of his salary that represents a normal reward for that work as an expense of his employer. Although the English practice is not conclusive in the autonomous context of Article 50 (art. 50) (see paragraph 15 above), it is noteworthy that similar considerations appear to underlie that practice. Neither the Government nor the Commission contested that in the present case Mr. Whitaker rendered services which would otherwise have had to be provided by independent lawyers paid by Times Newspapers Limited. The Court therefore concludes that the expense of 7,500 pounds can be regarded as actually incurred.

2. Were the costs necessarily incurred?

26. Both Government and Commission have commented on the necessity of incurring certain of the Strasbourg costs. The items will be taken in turn.

(a) Costs referable to unsuccessful submissions

27. The Government contended that the applicants should be denied costs incurred in advancing extensive submissions which were rejected by the Commission and the Court, arguing that *ex hypothesi* those costs were not necessary to the establishment of a breach of the Convention. They cited, in particular, the allegations that the applicants were subject to continuing restraints in breach of Article 10 (art. 10), that the restriction on their freedom of expression was not "prescribed by law" within the meaning of that Article (art. 10) and that there had been discrimination contrary to Article 14 read in conjunction with Article 10 (art. 14+10) (see the Court's

judgment of 26 April 1979, p. 28, par. 42, p. 30, par. 46, and pp. 42-43, par. 69).

The applicants replied that they had to assert their case to the best of their ability and that evaluation by hindsight was the wrong approach.

28. The Court cannot accept the Government's contention, even on the assumption that there is a satisfactory method of surmounting the difficulties of calculation which it involves. In its above-mentioned *Neumeister* judgment (pp. 19-20, par. 42, and p. 4, par. 2), the Court drew no distinction between costs referable to successful pleas on Article 5 par. 3 (art. 5-3) and costs referable to unsuccessful pleas on Articles 5 par. 4 and 6 par. 1 (art. 5-4, art. 6-1). Whilst it is in the interests of a proper and expeditious administration of justice that the Convention institutions be not burdened with pleas unrelated or extraneous to the case in hand, the submissions now in question cannot be so described. They all bore on the situation created for the applicants by the injunction ordered by the House of Lords and the kernel of each of them was Article 10 (art. 10). Moreover, a lawyer has a duty to present his client's case as fully and ably as he can and it can never be predicted with certainty what weight a tribunal may attach to this or that plea, provided that it is not manifestly otiose or invalid.

(b) Fees paid to three counsel for services rendered in 1978/79: 12,000 pounds

29. The Government claimed that the expense of instructing three counsels was not necessarily incurred, whereas the Delegates had no difficulty in accepting that it was.

30. Whilst it is true that the applicants were not parties to the proceedings before the Court and that the role of their counsel was limited to assisting the three Delegates of the Commission, it has to be remembered that the latter does not represent the applicants, its main function being to "assist" the Court, "in the capacity of defender of the public interest" (see the *Lawless* judgment of 14 November 1960, Series A no. 1, pp. 11 and 16). The association of the applicants with the proceedings in this way is of evident utility. However, bearing in mind that the delegates were already assisted by Mr. Whitaker and that two of the applicants themselves - Mr. Harold Evans and Mr. Knightley - were also present at the hearings, the Court takes the view that it was not necessary for more than one counsel, namely Mr. Lester as leading counsel, to attend on that occasion. On the other hand, the services in question included not only the appearance before the Court but also the preparation within a relatively short time of a substantial memorial involving much detailed research. Whilst expressing no opinion as to the precise number of counsel necessary for this purpose, the Court does not consider that one would have sufficed. Taking these factors and the circumstances of the case into account, the Court retains a sum of 10,000 pounds under this head.

(c) Travel and hotel expenses

(i) December 1975 (proceedings before the Commission): 604.85 pounds

31. The Government claimed that it was not necessary for Mr. James Evans, as adviser to the applicants, and Mr. Page and Mr. Knightley, two of the three individual journalist applicants, to attend the Commission hearings. The Court sees no reason to differ from the Commission, which expressed a contrary opinion, on a matter falling essentially within the latter's province. It therefore accepts as necessary the whole of this item which relates to expenses occasioned by the attendance of these three persons and of Mr. Whitaker.

ii) April 1978 (hearings before the Court): 1,319.60 pounds

32. The Government disputed this item as regards, firstly, the proportion thereof referable to the attendance of three counsel and, secondly, the necessity for the presence at the hearings of Mr. Knightley, Mr. Harold Evans (the editor of the Sunday Times) and Mr. James Evans, as solicitor to the applicants. For the Delegates, the second point depended on the Court's standard of necessity.

33. The Court has already dealt with the question of counsel (see paragraph 30 above) and therefore disallows the sum of 377 pounds referable to the attendance of the two junior counsel accompanying Mr. Lester. For similar reasons, bearing in mind that Mr. Whitaker was present as well as Mr. Lester, it excludes the further sum of 175.40 pounds claimed in respect of Mr. James Evans.

On the other hand, the Court considers that the presence of Mr. Knightley and Mr. Harold Evans, as applicants, was of value and sees no reason for not following the solution adopted in the above-mentioned König judgment (p. 19, par. 26).

In the result, the Court accepts as necessarily incurred under this head the travel and hotel expenses for Mr. Lester, Mr. Knightley, Mr. Harold Evans and Mr. Whitaker, namely 767.20 pounds.

(iii) April 1979 (delivery of the Court's judgment of 26 April): 705 pounds

34. The Government questioned the necessity for the presence on this occasion of Mr. Harold Evans, Mr. Knightley and Ms. Potter. The Delegates also had "considerable doubts" about this item.

35. The Court agrees. Whilst the wish of these three applicants to hear the judgment delivered is only too understandable, it cannot be said, for the purposes of Article 50 (art. 50), that their presence was necessary, bearing particularly in mind that Mr. Whitaker was also in the court-room. The Court therefore retains under this head only the expenses occasioned by the latter's attendance, namely 176.25 pounds.

(d) Disbursements

(i) Opinions on contempt law from eight countries: 2,000 pounds

36. For the Government, this disbursement was not necessarily incurred; for the Delegates, it depended on the Court's standard of necessity: they stated that the Commission would not normally obtain such opinions from a party but that they might have been necessary for the preparation of the applicants' submissions.

37. The applicants pointed out that the question of the uniqueness of the English law of contempt of court had arisen before the Commission. All the same, the Court is not satisfied that this disbursement was necessary for the determination of the issues arising and it therefore disallows this item.

(ii) Copies of the book "Thalidomide: My Fight": 52.60 pounds

38. The Delegates were of the view that whether this disbursement should be taken into account depended on the Court's standard of necessity. The Government, in their supplementary memorial, claimed that the expense was not necessary.

39. The book was supplied to the Court by the applicants on their own initiative shortly before the hearings of 24 and 25 April 1978. Although it provided some background information, the Court does not consider that the book was necessary for the presentation of their case and therefore excludes this item.

(e) Other expenses

40. Neither Government nor Commission contested, and the Court perceives no reason to question, the necessity for the other expenses mentioned in the schedule of the Strasbourg costs. Those expenses, namely the sum of 7,500 pounds in respect of work done by Mr. Whitaker (see paragraph 25 above) and disbursements referable to translation (26.84 pounds), typing (231.62 pounds), air freighting and carriage of documents (50.02 pounds and 20 pounds) and telephone calls (250 pounds), total 8,078.48 pounds.

3. Were the costs reasonable as to quantum?

41. It remains to be ascertained whether the expenses accepted by the Court as actually and necessarily incurred are reasonable as to quantum.

The Delegates stated that they did not propose to consider the actual amounts in themselves. The Government made the general observation that the costs claimed, especially counsels' fees, exceeded in quantum the sums that would normally be recoverable under the English system of assessment of costs (see paragraph 9 above). However, the Court does not consider that it has to pursue this point since, in the context of a claim for legal expenses

under Article 50 (art. 50), it is not bound by domestic scales or standards (see the above-mentioned König judgment, pp. 18-19, par. 22-23 and 25). As regards the amounts themselves, the Court is of the opinion that none of them can be regarded as out of proportion.

42. By way of a final alternative submission, the Government invited the Court to hold that any costs awarded should in any event not exceed a sum calculated by reference to the current rates payable under the scheme for free legal aid operated by the Commission. They pointed in particular to the fact that the Commission scale was the only single standard available and to the anomalies that would arise if it were not adopted. The Delegates repeated the doubts which they had already expressed in connection with a similar submission by the Government of the Federal Republic of Germany in the König case.

In that case, the Court saw no reason for refusing full reimbursement of the costs incurred insofar as they proved reasonable (see the above-mentioned König judgment, p. 19, par. 24). The Court is not persuaded that it should adopt a different solution in the present instance and accordingly does not accept the Government's submission.

4. Costs of the Article 50 (art. 50) proceedings

43. In their observations filed on 21 February 1980, the applicants stated that it was "reasonable to add a further figure to date of 3,000 pounds" in respect of the proceedings under Article 50 (art. 50). Neither Government nor Commission suggested that this expense had not been actually or necessarily incurred.

Whilst the applicants have not provided any details concerning this item, it appears to relate to work done by Mr. Whitaker and can therefore be regarded as actually incurred for the reasons stated in paragraph 25 above. It was described as a figure "to date" but there is no evidence of any expenditure since February 1980 other than that referable to the preparation of a document which the Court decided not to take into account (see paragraph 5 above). The Court does not consider that it has to make further enquiries in this respect: it was clearly necessary to incur some expenditure in connection with the Article 50 (art. 50) proceedings and a figure of 3,000 pounds does not prove to be unreasonable.

5. Interest

44. Neither the Government nor the Delegates commented specifically on the applicants' claim for "interest at 10% per annum from the date of the relevant judgments (i.e. 26 April 1979 and whenever judgment is given on the issue under Article 50) (art. 50) until payment".

Since no award was made in the Court's judgment of 26 April 1979, it is only the present judgment that is "relevant" for this purpose. Moreover, it

may be assumed that the United Kingdom will comply promptly with the obligation incumbent on it under Article 53 (art. 53) of the Convention. The Court therefore does not find it necessary to accede to this claim.

45. The items accepted by the Court in paragraphs 30, 31, 33, 35, 40 and 43 above total 22,626.78 pounds.

FOR THESE REASONS, THE COURT

1. Holds by thirteen votes to three that the United Kingdom is to pay to the applicants, in respect of costs and expenses incurred in connection with the proceedings before the Commission and the Court, the sum of twenty-two thousand six hundred and twenty-six pounds sterling and seventy-eight pence (22,626.78 pounds);
2. Rejects unanimously the remainder of the claim for just satisfaction.

Done in English and in French, the English text being authentic, at the Human Rights Building, Strasbourg, this sixth day of November, one thousand nine hundred and eighty.

For the President
Gérard WIARDA
Vice-President

Marc-André EISSEN
Registrar

The separate opinions of Sir Gerald Fitzmaurice, Mr. Liesch and Mr. Pinheiro Farinha are annexed to the present judgment in accordance with Article 51 par. 2 (art. 51-2) of the Convention and Rule 50 par. 2 of the Rules of Court.

G.W.
M.-A.E.

DISSENTING OPINION OF JUDGE SIR GERALD
FITZMAURICE

Article 50 (art. 50) of the European Convention on Human Rights allows the Court complete discretion as to what "just satisfaction" is to be afforded to the injured party in the event of a breach of the Convention in cases where the internal law of the State concerned does not afford adequate reparation. The Court is free to depart from the normal English practice of costs following the event.

Having regard to the character of the present case, and to the difficult and highly complex nature of the issues involved, and also to the narrow majority by which the applicants (Times Newspapers Ltd.) were found to have suffered from a breach of the Convention, I consider that this finding constituted in itself an amply sufficient satisfaction in the circumstances, and that there is no occasion to award the applicants any sums by way of costs, whether English or Strasbourg costs. It is on this ground that I have voted in favour of the Court's rejection (on other grounds) of the claim for the English costs, and have voted against its award (under various heads) of Strasbourg costs.

I should in any case have voted against the award of £7,500 in respect of the work done by Mr. Whitaker. The Court is not bound by the English practice in this respect, and in my opinion if the salary paid to a full-time salaried solicitor covers a particular piece of work which it is part of his normal duties to perform, his employers should not be regarded by this Court as being entitled to recover the amount which they would have had to pay if they had employed an outside expert adviser to do the work concerned. In the circumstances, therefore, I consider this amount of £7,500 as being a cost that was not incurred by the applicants (since they would have paid Mr. Whitaker the same salary in any event), and in my view the award of it is quite gratuitous and uncalled for.

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DISSENTING OPINION OF JUDGE LIESCH

DISSENTING OPINION OF JUDGE LIESCH

(Translation)

I agree with the separate opinion of Judge Sir Gerald Fitzmaurice.

DISSENTING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

I am unable to accept the opinion expressed by the majority in paragraph 25 of the judgment.

In fact, Mr. Whitaker was the Legal Manager of Times Newspapers Limited and his salary - which was fixed - covered all the services which he rendered. Since there is nothing to show that he received £7,500 over and above his ordinary remuneration, I do not accept that this item of the costs was actually incurred. I would therefore assess the amount to be paid to the applicants at £15,126.78.