



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

COURT (PLENARY)

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

(Application no. 9787/82)

JUDGMENT

STRASBOURG

5 October 1988

In the Weeks case*,

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 F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr B. WALSH,
Sir Vincent EVANS,
Mr R. MACDONALD,
Mr C. RUSSO,
Mr R. BERNHARDT,
Mr A. SPIELMANN,
Mr J. DE MEYER,

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

Having deliberated in private on 23 June and 29 September 1988,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE AND FACTS

1. The case was referred to the Court on 14 March 1985 by the European Commission of Human Rights ("the Commission"). It originated in an application (no. 9787/82) against the United Kingdom of Great Britain and Northern Ireland which had been lodged with the Commission on 6 April 1982 by a British citizen, Mr Robert Malcolm Weeks.

2. By judgment of 2 March 1987 ("the principal judgment"), the plenary Court held that there had been a violation of Article 5 para. 4 (art. 5-4) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), in that in the particular circumstances neither the procedure before the Parole Board nor the remedy of judicial review satisfied the requirements of Article 5 para. 4 (art. 5-4) (Series A no. 114,

* Note by the Registrar: The case is numbered 3/1985/89/136. 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.

paragraphs 54-70 of the reasons and point 2 of the operative provisions, pp. 27-33 and 34).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) of the Convention in the present case. Accordingly, as regards the facts, reference should be made to paragraphs 10 to 31 of the principal judgment (*ibid.*, pp. 10-19).

3. Claims by the applicant for financial compensation were filed at the registry on 9 and 29 August 1985. In their written memorial on the merits, the Government of the United Kingdom ("the Government") made what they described as tentative, conditional and preliminary observations and took the view that further submissions would be premature.

As the question of the application of Article 50 (art. 50) was therefore not ready for decision, the Court, in the principal judgment, reserved the whole of this question and invited the Government to submit their written comments within the next two months and, in particular, to notify the Court of any agreement reached between them and the applicant (paragraphs 71-72 of the reasons and point 3 of the operative provisions, pp. 33-34).

4. In April 1987, that is in the month following the delivery of the principal judgment, Her Majesty the Queen, on the recommendation of the Home Secretary, remitted the applicant's life sentence by means of the Royal Prerogative. As a result, the applicant, who is still at liberty (see the principal judgment, p. 14, para. 23 *in fine*), is no longer subject to the conditions of a life licence and no longer liable to be recalled to prison.

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

- on 5 May 1987, memorial of the Government;
- on 13 and 21 May 1987, memorials of the applicant.

In May 1987, at the applicant's request, the President deferred consideration of the claims, pending the determination of further domestic proceedings brought by the applicant. Those proceedings having proved unsuccessful, he requested the Court, in a further memorial filed on 10 March 1988, to proceed with its examination of the matter. In accordance with the President's direction, the Government filed a memorial on 22 April 1988.

These documents revealed that, save as hereinafter mentioned, no agreement had been concluded between the Government and the applicant.

On 25 March 1988, the Delegate of the Commission informed the Registrar that he would not be filing any memorial.

6. In their memorial filed on 22 April 1988, the Government offered to pay the sum sought by the applicant in respect of costs and expenses referable to the proceedings before the Commission and the Court, namely £2,500 less the amounts received from the Council of Europe by way of legal aid. The applicant's lawyer confirmed to the registry on 16 May 1988 that payment of this sum would be accepted in full and final settlement of

this part of the claim, without prejudice to his client's right to seek reimbursement of further costs and expenses should the Court decide to hold a hearing.

7. Having consulted, through the Registrar, the Agent of the Government, the Delegate of the Commission and the applicant's representative, the Court decided on 29 September 1988 that there was no need to hold a hearing.

AS TO THE LAW

8. Article 50 (art. 50) of the Convention provides 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 ... 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 compensation for pecuniary and non-pecuniary damage, together with reimbursement of costs and expenses incurred in the proceedings before the Convention institutions.

A. Costs and expenses

9. The Court has been informed of an agreement concluded between the Government and the applicant concerning the claim for costs and expenses (see paragraph 6 above). The Court, having regard to the terms of the agreement and the absence of any objection on the part of the Commission's Delegate, finds that it is of an "equitable nature", within the meaning of Rule 53 para. 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

10. (a) The applicant maintained that had he been entitled to take proceedings complying with Article 5 para. 4 (art. 5-4), he would have been released earlier and would have obtained gainful employment. He sought compensation for loss of earnings, computed on the basis of his hypothetical release on one of the following three dates:

(i) April 1975, when his release was first recommended by the Parole Board (see the principal judgment, p. 11, para. 16);

(ii) October 1977, when Judge Streeter at Maidstone Crown Court suggested that his liberty be restored to him (see the principal judgment, p. 12, para. 19);

(iii) May 1979, when his release was again recommended by the Parole Board (see the principal judgment, p. 13, para. 20).

Loss of earnings of between £35,000 and £45,000 approximately, calculated on the basis of the average industrial wage, was claimed from the above alternative dates up to 3 July 1985. The alleged loss also included two years' loss of future earnings but excluded any period when Mr Weeks was actually at liberty or in detention pursuant to a court order. In support of this head of claim, Mr Weeks referred to his employment at the time of his arrest in 1977 and to the employment he obtained on his release in 1982.

(b) The applicant also sought compensation for non-pecuniary damage suffered as a result of the absence of proceedings enabling him to challenge his detention under Article 5 para. 4 (art. 5-4). He submitted that the prison environment, the length of his periods in custody and the constant threat of re-detention had had adverse effects on his personal life and development. A periodic review under Article 5 para. 4 (art. 5-4) would have been an incentive for him to improve his behaviour. In addition, he had been deprived of the opportunity to acquire professional skills and build up a good work-record. The amounts claimed under this heading - £58,750 or, alternatively, £48,750 for the periods from April 1975 or June 1977 to 3 July 1985 respectively - were based on payments of £10,000 per annum which have been made on an *ex gratia* basis by the Home Secretary to persons wrongly imprisoned in the United Kingdom.

11. The Government contested both of these claims. Their arguments may be summarised as follows.

(a) As regards pecuniary damage, the applicant had failed to prove that he would have been released earlier had he been entitled to take proceedings complying with Article 5 para. 4 (art. 5-4). Furthermore, the asserted loss related entirely to the fact of detention, which the Court had found in the principal judgment to have been lawful under the Convention. Accordingly, no causal link had been established between the alleged damage and the breach found by the Court.

(b) As regards non-pecuniary damage, the applicant had failed to prove any such loss capable of being attributed to the violation found. The Court was not entitled to make any presumption in this respect. Having regard, in particular, to the remission in April 1987 of the applicant's life sentence (see paragraph 4 above), the finding of a violation of Article 5 para. 4 (art. 5-4) constituted of itself sufficient just satisfaction under the circumstances.

12. The Court recalls its finding that the applicant's deprivation of liberty in 1977 and during the subsequent periods in issue was lawful under Article 5 para. 1 (a) (art. 5-1-a) of the Convention (see the principal judgment, paragraphs 51-53 of the reasons and point 1 of the operative

provisions, pp. 27 and 34). The violation found by the Court resulted from the absence of proceedings complying with the requirements of Article 5 para. 4 (art. 5-4) whereby Mr Weeks should have been entitled to challenge the lawfulness of his detention "at the moment of any return to custody after being at liberty and also at reasonable intervals during the course of his imprisonment" (*ibid.*, p. 29, para. 58).

Accordingly, no compensation is payable in respect of the harmful consequences attributable to the contested deprivation of liberty as such; for the purposes of an award of just satisfaction under Article 50 (art. 50), the only prejudice that may be taken into account is that caused by the lack of a remedy satisfying the requirements of Article 5 para. 4 (art. 5-4) (see the *X v. the United Kingdom* judgment of 18 October 1982, Series A no. 55, p. 16, para. 17; the *Van Droogenbroeck* judgment of 25 April 1983, Series A no. 63, p. 6, para. 11; and the *Luberti* judgment of 23 February 1984, Series A no. 75, p. 18, para. 40).

13. As regards the claim for pecuniary loss, the applicant submitted that the only possible inference to be drawn from the suggestion made by the Crown Court judge in October 1977 that his liberty be restored to him and the favourable recommendation made by the Parole Board in May 1979 - neither of which resulted in his release - was that he would have been released on either occasion had he been entitled to take proceedings complying with Article 5 para. 4 (art. 5-4).

The Court finds it impossible to state that the applicant would definitely have been released had such proceedings been available to him. On the other hand, it cannot be entirely excluded that he might have been released earlier and, in view of his age, might have obtained some practical benefit. Consequently, Mr Weeks may be said to have suffered a loss of opportunities by reason of the absence of such proceedings, even if in the light of the recurrence of his behavioural problems the prospect of his realising them fully was questionable (see the *Bönisch* judgment of 2 June 1986, Series A no. 103, p. 8, para. 11). The claim for pecuniary loss cannot therefore be completely discounted.

14. As regards non-pecuniary loss, the absence of a remedy satisfying the requirements of Article 5 para. 4 (art. 5-4) must have caused Mr Weeks a feeling of frustration and helplessness, especially in view of his age and the particular circumstances of the case. In the opinion of the Court, neither the remission of his life sentence in April 1987 nor its finding of a violation constitutes adequate just satisfaction for the prejudice suffered as a result of the violation up to April 1987. Accordingly, some monetary compensation is justified.

15. In fixing the amount of compensation to be awarded, account should be taken of the special features of the case, notably the severity of the "indeterminate" life sentence in relation to the crime committed (see the principal judgment, pp. 10-11, paras. 11-15). Even so, the amounts sought

in respect of both pecuniary and non-pecuniary damage are excessive. However, it is impossible to quantify either head of damage in any precise way. Taking them together and, as is required by Article 50 (art. 50), on an equitable basis, the Court affords the applicant just satisfaction in the sum of £8,000.

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 £8,000 (eight thousand pounds) for damage;
3. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 5 October 1988 pursuant to Rule 54 para. 2, second sub-paragraph, of the Rules of Court.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar