



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

COURT (PLENARY)

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

(Application no. 9749/82)

JUDGMENT

STRASBOURG

9 June 1988

In the case of W 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. 9749/82) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission in 1982 by a British citizen.

* Note by the Registrar: The case is numbered 4/1986/102/150. 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 breaches of Articles 8 and 6 § 1 (art. 8, art. 6-1) of the Convention by reason of the procedures followed and the insufficiency of the remedies available in connection with decisions relating to his child in the care of a local authority (Series A no. 121-A, paragraphs 58-83 of the reasons and points 1 and 3 of the operative provisions, pp. 26-36 and 37).

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 8-53 of the principal judgment (*ibid.*, pp. 10-25).

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 fully 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 87-88 of the reasons and point 6 of the operative provisions, pp. 37 and 38).

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

- on 7 October 1987, memorial of the applicant, which was later supplemented by certain additional submissions;
- on 21 December 1987 and 5 February 1988, respectively, memorial of the Government and their observations on the applicant's additional submissions;
- 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 £25,350 plus value added tax, less the amounts received by him 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."

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 amount, of at least £100,000 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 the loss of consortium of his child S and the mental anguish and distress which he had sustained and continued to sustain.

(b) The Government argued that although the alleged damage might have been the consequence of the local authority decisions in which the Court had found the applicant to have been insufficiently involved and of his lack of access to S, it was not attributable to the breaches of Articles 6 § 1 and 8 (art. 6-1, art. 8), since there was no evidence that the outcome would have been different if he had been more closely involved or if he had been able to have the question of his access to this child reviewed by a tribunal having jurisdiction to examine the merits of the matter. 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 particular facts of the case which they set out in their memorial, there was no evidence that a closer involvement of the applicant in the local authority's decision-making process or the availability of a judicial remedy on the access issue could actually have benefited him 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 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 him. Violations were found solely on the following grounds: as regards Article 8 (art. 8), the applicant's insufficient involvement in the local authority's decisions to place S with long-term foster parents with a view to adoption (January or February 1980) and to terminate his and his wife's access to the child (April 1980), together, as a subsidiary point, with the length of the wardship proceedings (January to October 1981); and, as regards Article 6 § 1 (art. 6-1), the non-availability of a judicial remedy on the merits of the access issue (see the principal judgment, pp. 29-31, §§ 66-70, and pp. 35-36, §§ 80-83).

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

11. As regards the loss of consortium of S, which the applicant attributed to the breaches of the Convention, it cannot be affirmed with certainty that, if the applicant had been more closely involved in the relevant deliberations of the local authority or if the wardship proceedings had been conducted more expeditiously, the outcome in either case would definitely have been different. And even if a judicial remedy on the merits of the access question had been available to and had been successfully exercised by the applicant during the currency of the parental rights resolution, it would by no means have followed automatically that S would have been restored to his care or would not eventually have been adopted;

as the Court pointed out in paragraph 81 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 conclude that, as the Government submitted, no practical benefit could have accrued to the applicant if the procedural deficiencies in question had not existed.

It is true that, having regard to the family situation obtaining at the time, it appears somewhat unlikely that even with closer involvement on the part of the applicant the local authority's decisions of January or February 1980 and April 1980 would have been any different (see the principal judgment, pp. 12-13, §§ 14-16).

As regards the wardship proceedings instituted in January 1981, it does not seem impossible that they could have led to a different result if they had been concluded earlier than October 1981, that is at a time when the process of "bonding" between S and the foster parents with whom he had been placed in May 1980 was less advanced (*ibid.*, pp. 13-14, §§ 17-21).

As for the possible value to the applicant of a judicial remedy on the merits of the access issue, it is true that the High Court (with the subsequent approval of the Court of Appeal) refused access to the applicant and his wife, to avoid encouraging them in attempts to seek S's return (*ibid.*, p. 14, § 20). However, that decision was given in June 1981, by which time the child had been with his foster parents for more than a year. Furthermore, the different considerations involved mean, as the Court pointed out in paragraph 81 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 excluded that if during the currency of the parental rights resolution the applicant had been able to have the question of his access to S reviewed by a court on its merits, he might have done so at a date earlier than that on which he actually instituted proceedings to challenge the resolution (*ibid.*, p. 13, § 18). And, as the Court also observed in paragraph 81 of the principal judgment, by taking such a course the applicant "might have ... changed the whole future complexion of his relationship with S".

In these respects he may therefore be said to have suffered some loss of real opportunities as well as mental anguish and distress, warranting monetary compensation.

None of the above-mentioned factors 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.

C. Miscellaneous

13. 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.

14. The applicant, in his additional submissions, invited the Court to make a variety of directions relating to such matters as the exchange of cards, letters, presents and photographs with S, the supply of his school and medical reports, and visits to him by the applicant's other children.

The Court is, however, not empowered under the Convention to make orders of this kind (see, *inter alia*, the *Gillow* judgment of 14 September 1987, Series A no. 124-C, p. 26, § 9).

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

A declaration by Mr. De Meyer is annexed to this judgment.

R. R.
M.-A. E.

DECLARATION BY JUDGE DE MEYER

I have strong reservations concerning paragraph 14 of this judgment. I feel that the Court's duty "to ensure the observance of the engagements undertaken by the High Contracting Parties"¹ may, in certain circumstances, entail the power to make orders.

¹ Article 19 (art. 19) of the Convention.