



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

COURT (CHAMBER)

**CASE OF FOX, CAMPBELL AND HARTLEY v. THE UNITED  
KINGDOM (ARTICLE 50)**

*(Application no. 12244/86; 12245/86; 12383/86)*

JUDGMENT

STRASBOURG

27 March 1991

**In the case of Fox, Campbell and Hartley\*,**

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 R. RYSSDAL, *President*,

Mr J. CREMONA,

Mr J. PINHEIRO FARINHA,

Sir Vincent EVANS,

Mr R. BERNHARDT,

Mr S.K. MARTENS,

Mrs E. PALM,

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

Having deliberated in private on 20 February and 21 March 1991,

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

## PROCEDURE AND FACTS

1. The case was brought before the Court by the European Commission of Human Rights ("the Commission") on 13 July 1989. It originated in three applications (nos. 12244/86, 12245/86 and 12383/86) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on 16 June 1986 by Mr Bernard Fox and Ms Maire Campbell and on 2 September 1986 by Mr Samuel Hartley, who are all three Irish citizens.

As regards the facts of the case, reference is made to paragraphs 8 to 23 of the Court's judgment of 30 August 1990 ("the principal judgment" - Series A no. 182, pp. 8-14). The applicants' complaints were directed against their arrest and detention under criminal legislation enacted to deal with acts of terrorism connected with the affairs of Northern Ireland.

2. In the principal judgment the Court arrived at the following conclusions as regards all three applicants:

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\* Notes by the Registrar: The case is numbered 18/1989/178/234-236. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

\*\* The amendments to the Rules of Court which entered into force on 1 April 1989 are applicable to this case.

(a) there had been a breach of Article 5 para. 1 (art. 5-1) of the Convention, in that although the applicants' arrest and detention had been based on a bona fide suspicion that they were terrorists, the explanations furnished by the United Kingdom Government were insufficient to support the conclusion that there was "reasonable suspicion"; that being so, it was not necessary to go into the applicants' further allegation that the purpose of their arrest was not to bring them before the "competent legal authority" but rather to gather information (paragraphs 29-36 of the reasons and point 1 of the operative provisions, pp. 15-18 and 22);

(b) there had been no breach of Article 5 para. 2 (art. 5-2) since the reasons for the applicants' detention had been brought to their attention with sufficient promptness after their arrest (paragraphs 37-43 of the reasons and point 2 of the operative provisions, pp. 18-20 and 22);

(c) it was unnecessary to examine the complaint under Article 5 para. 4 (art. 5-4) as the applicants had been released speedily before any judicial control of their detention had taken place and it was not for the Court to rule in abstracto on the scope of the remedies available (paragraphs 44-45 of the reasons and point 4 of the operative provisions, pp. 20-21 and 22);

(d) there had been a breach of Article 5 para. 5 (art. 5-5), in that the applicants had no enforceable claim for compensation before the domestic courts for the breach of Article 5 para. 1 (art. 5-1) (paragraph 46 of the reasons and point 3 of the operative provisions, pp. 21 and 22);

(e) it was unnecessary to examine the complaint under Article 13 (art. 13) having regard to the findings on Article 5 paras. 2 and 4 (art. 5-2, art. 5-4) (paragraph 47 of the reasons and point 4 of the operative provisions, pp. 21 and 22).

3. In written observations of 9 March, 18 May and 21 June 1990, the applicants had claimed compensation for pecuniary and non-pecuniary damage and reimbursement of their costs and expenses referable to the proceedings before the Convention institutions. The Government had commented on the costs claim on 23 May and 27 July but had considered it more appropriate to reserve their submissions as to the compensation claim until the delivery of the judgment on the substantive issues.

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 the said question and invited the Government and the applicants to submit their written comments within the next three months and, in particular, to notify the Court of any agreement reached between them (paragraph 48 of the reasons and point 5 of the operative provisions, pp. 21-22).

4. In accordance with the foregoing invitation and the President's directions, there were filed at the registry, on 23 November 1990, a memorial of the Government and, on 28 January 1991, further observations

of the applicants, in which they requested an oral hearing. These documents revealed that no agreement as aforesaid had been reached.

On 14 February 1991 the Delegate of the Commission lodged observations on the question of the application of Article 50 (art. 50) in the present case.

5. The Court decided on 20 February 1991 that there was no need to hold a hearing.

## AS TO THE LAW

6. 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."

### A. Costs and expenses

7. For costs and expenses referable to the proceedings before the Convention institutions the applicants jointly sought reimbursement of £70,001, exclusive of value-added tax, and 7,993 French francs; the amounts claimed related to the fees and disbursements of their solicitors and counsel and to travel and subsistence expenses.

The Government submitted that the applicants' overall claim was "wholly excessive": while they had claimed £27,000 as fees for senior and junior counsel, the Government considered that £15,000 would be appropriate; and whereas the applicants had claimed solicitors' fees for 115 hours of work at £300 per hour, the Government considered that 80 hours at £75 per hour would be reasonable. The Government also noted that some of the items had already been covered by the payments received from the Council of Europe by way of legal aid. Furthermore, they argued that, as the Court had found a violation in respect of only one of the applicants' substantive claims - the claim under Article 5 para. 1 (art. 5-1) concerning "reasonable suspicion" -, only an appropriate proportion of their claim should be allowed. They suggested that a sum not in excess of £11,000 should be awarded.

These submissions were contested by the applicants, who maintained notably that their cases were prepared and presented as a whole.

The Delegate of the Commission considered that the applicants should receive a sum to cover their reasonable legal costs, but made no proposal as to quantum, leaving the matter to the Court's discretion.

8. The Court has examined the claim in the light of the criteria followed in its case-law and of the above-mentioned observations.

The applicants have received from the Council of Europe 32,257.19 French francs in respect of their travel and subsistence expenses and the Court does not find it necessary to make any further award under this head.

As regards lawyers' fees, the Court finds that, for the reasons advanced by the Government, the claim cannot be accepted in full. Taking this into account and also the legal aid payment of 12,690.00 French francs already made in respect of fees and making an assessment on an equitable basis, the Court holds that the applicants should be awarded jointly £11,000. This figure is to be increased by any value-added tax that may be chargeable.

## **B. Damage**

9. The applicants claimed, by way of pecuniary damage, only the difference between the costs and expenses actually awarded and the amount they were legally obliged to pay. This claim cannot be entertained, the issue of costs having been determined in paragraphs 7-8 above (see, *mutatis mutandis*, the Brogan and Others judgment of 30 May 1989, Series A no. 152-B, p. 44, para. 7).

10. By way of non-pecuniary damage, the applicants sought compensation for the prejudice sustained as a result of the breaches of Article 5 (art. 5). They submitted that the amount payable by way of just satisfaction ought not to be less than that which would have been payable under domestic law if any relief had been available thereunder. Furthermore they requested that the Court have particular regard to the conditions of detention in assessing compensation.

The Government contended that an award of any sum by way of compensation for non-pecuniary loss was in the present case both inappropriate and unnecessary, no causal link having been established between the non-pecuniary damage alleged and the particular violation of Article 5 para. 1 (art. 5-1) found by the Court. Even if it had been, they submitted that, having regard to all the circumstances, the finding of a violation of Articles 5 para. 1 and 5 para. 5 (art. 5-1, art. 5-5) constituted sufficient just satisfaction for the purposes of Article 50 (art. 50).

The Delegate of the Commission considered that the applicants should be awarded a sum in compensation; he left the matter of quantum to the Court.

11. The Court does not exclude that the applicants may have sustained some non-pecuniary damage as a result of the breaches of Article 5 (art. 5). However, having regard to the circumstances of the case and the reasons leading to the decisions recorded in paragraphs 2 (b) and (c) above, it

considers that even in that event the finding in the principal judgment of violations of Article 5 (art. 5) in itself constitutes sufficient just satisfaction for the purposes of Article 50 (art. 50).

## FOR THESE REASONS, THE COURT

1. Holds unanimously that the United Kingdom is to pay to the applicants jointly, in respect of costs and expenses, the sum of £11,000 (eleven thousand pounds), together with any value-added tax that may be chargeable;
2. Holds by six votes to one that, in respect of non-pecuniary damage, the principal judgment in itself constitutes sufficient just satisfaction for the purposes of Article 50 (art. 50);
3. Dismisses unanimously the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 27 March 1991 pursuant to Rule 55 para. 2, second sub-paragraph, of the Rules of Court.

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the dissenting opinion of Mr Pinheiro Farinha is annexed to this judgment.

R. R.  
M.-A. E.

DISSENTING OPINION OF JUDGE PINHEIRO FARINHA  
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*(Translation)*

1. I am unable to agree with the position adopted by my colleagues in paragraph 11 of the judgment.

2. I share the view of the Delegate of the Commission that the applicants should have been awarded compensation. Under Article 5 para. 5 (art. 5-5) a "victim of arrest or detention in contravention of the provisions of [the] Article" must always be compensated.

In this instance "the applicants had no enforceable claim for compensation before the domestic courts for the breach of Article 5 para. 1 (art. 5-1)" (see paragraph 2 (d) of the Article 50 judgment). For this reason I consider that they should have been awarded some financial compensation for non-pecuniary damage.