

In the case of Y v. the United Kingdom\*,

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 R. Bernhardt,  
Mr Thór Vilhjálmsson,  
Mr F. Gölcüklü,  
Mr F. Matscher,  
Mr R. Macdonald,  
Mr F. Bigi,  
Sir John Freeland,  
Mr L. Wildhaber,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 25 September and 28 October 1992,

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

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#### Notes by the Registrar

\* The case is numbered 91/1991/343/416. 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.

\*\* As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

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#### PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 7 December 1991, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14229/88) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) on 2 September 1986 by two British citizens, Mrs X and her son Y. The expression "the applicant" hereinafter designates Y, his mother's complaints having been declared inadmissible by the Commission (see paragraph 13 below).

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 3, 8 and 13 (art. 3, art. 8, art. 13) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyers who would represent him (Rule 30).

3. On 24 January 1992 the President of the Court decided that, pursuant to Rule 21 para. 6 and in the interests of the proper administration of justice, this case and the case of *Costello-Roberts v. the United Kingdom*\* should be heard by the same Chamber.

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\* Case no. 89/1991/341/414.

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4. The Chamber to be constituted for this purpose included ex officio Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 January 1992 the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr J. Cremona, Mr Thór Vilhjálmsson, Mr F. Gölcüklü, Mr R. Macdonald, Mr R. Bernhardt, Mr F. Bigi and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr F. Matscher, substitute judge, replaced Mr Cremona, whose term of office had expired and whose successor had taken up his duties before the hearing (Rules 2 para. 3 and 22 para. 1).

5. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government of the United Kingdom ("the Government"), the Delegate of the Commission and the applicant's representative on the organisation of the procedure (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received, on 23 June 1992, the applicant's memorial and, on 22 July, the Government's. By letter of 17 August 1992, the Secretary to the Commission informed him that the Delegate would submit his observations at the hearing.

6. Attempts to reach a friendly settlement gave rise, between 10 February and 18 September 1992, to a series of letters and telephone conversations between the Government, the applicant's solicitors and the Registrar.

7. On 9 and 21 September 1992 the Government and the applicant's solicitors informed the Registrar of the terms of settlement agreed between them.

The Delegate of the Commission was consulted (Rule 49 para. 2) and submitted his observations on 21 September 1992.

8. On 25 September the Court decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

9. By letter of 17 September, a federation of non-governmental organisations, Epoch Worldwide, had requested leave to submit written comments pursuant to Rule 37 para. 2 on the appropriateness or otherwise of striking this case out of the list. The President refused to grant such leave on 6 October.

#### AS TO THE FACTS

10. In 1983, Y, then aged fifteen, was a day pupil at an independent school in England. On 29 September he was knocked to the floor at the school by a fellow pupil who was chasing a younger boy. On the morning of the following day the applicant defaced the cover of the fellow pupil's file. He was sent for punishment to the headmaster who caned him four times on his bottom through his trousers.

11. On his return from school at about 5.45 p.m., Y's sister noticed his injuries and drew their mother's attention to them. She took him straight to the family doctor who found that he had four wheals across both buttocks, each wheal approximately 15cm in length and 1.23cm in width. There was heavy bruising and swelling of both buttocks. The doctor prescribed appropriate treatment and suggested that if the applicant's parents wished to pursue the matter, they should show the injuries to the headmaster and to the police that evening, which they duly did.

12. The police initially advised that the injuries amounted to evidence of assault occasioning actual bodily harm, but after further investigation decided not to prosecute the headmaster. The parents then initiated civil proceedings in the County Court claiming, inter alia, damages for assault.

On 28 July 1986 the County Court judge rejected the claims. He held that the parents had entered into a binding contract with the school in which it had been agreed that the school was authorised to cane pupils as a disciplinary punishment. The force used in such punishment, which would inevitably leave marks and bruising, had nevertheless to be reasonable. He found nothing unusual or excessive in the caning and considered that the parents had overreacted to the incident.

The parents did not appeal against the County Court decision as they were advised by counsel that such an appeal had no prospects of success.

#### PROCEEDINGS BEFORE THE COMMISSION

13. In their application (no. 14229/88) lodged with the Commission on 2 September 1986, Mrs X and her son Y contended that his corporal punishment constituted a breach of Article 3 (art. 3) of the Convention and also violated the right of each of them to respect for her or his private and family life guaranteed by Article 8 (art. 8). In addition, they alleged that, contrary to Article 13 (art. 13), they had no effective domestic remedies for these Convention complaints. An original complaint under Article 14 (art. 14) was subsequently withdrawn.

On 13 December 1990 the Commission declared the mother's complaints inadmissible and the son's admissible. In its report of 8 October 1991 (drawn up in accordance with Article 31) (art. 31), the Commission expressed the opinion, by eleven votes to two, that there had been a violation of Articles 3 and 13 (art. 3, art. 13), and that no separate issue arose under Article 8 (art. 8). The full text of the Commission's opinion and of the three separate opinions contained in the report is reproduced as an annex to this judgment\*.

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\* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 247-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

#### AS TO THE LAW

14. The Registrar of the Court was notified on 9 September 1992 by the Government that the applicant had accepted the following proposals for a friendly settlement:

"Without any admission by the Government that a breach of the Convention has occurred and on condition that the case is withdrawn from the Court and no further cases are instituted

against the Government in respect of this matter in any national or international court, the Government propose to:

1. pay the applicant £8,000;
2. pay the applicant's costs, namely
  - (a) County Court proceedings £4,516.38 plus interest
  - (b) Solicitors' fees £2,750 plus VAT
  - (c) Counsel's fees £1,000 plus VAT
  - (d) Mr Rosenbaum [an adviser]'s fees £750 plus VAT

provided that itemised bills are produced and the rate of interest is indicated so that the amounts claimed can be looked at by the Treasury Solicitors Costs Branch."

15. Acceptance of these proposals was confirmed by the applicant's solicitors in a letter received by the registry on 21 September. Payment in accordance with the agreed terms has since been made by the Government.

16. The Delegate of the Commission was consulted in accordance with Rule 49 para. 2 and on 21 September the Secretary to the Commission submitted the following comments:

"I am instructed by the Delegate to inform you that it is with some surprise and regret that he learns that Y is contemplating a mere financial settlement of his case at such a late stage in the proceedings. Y's case is the more impressive of the two applications concerning private school corporal punishment and clearly demonstrates the inadequacy of the civil remedy for treatment which, in the Commission's view, was in breach of Article 3 (art. 3) of the Convention. However, it is fair to say that part of the general interest raised by the Y application is maintained in the Costello-Roberts case, particularly the question of State responsibility for an act of a private school headmaster which is allegedly in breach of the Convention. Moreover it is understandable that Y wishes to put an end to these matters after so many years have gone by, his school days being far behind him. The Government's offer seems reasonable and it is quite normal that Y does not wish to ignore it.

The Delegate therefore concludes, albeit reluctantly, that he has no formal objection to make should the Court, in its wisdom, decide to endorse the settlement and strike the case off its list."

17. The Court takes formal note of the friendly settlement reached by the Government and the applicant. It discerns no reason of public policy (*ordre public*) why the case should not be struck out of the list (Rule 49 paras. 2 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 29 October 1992.

Signed: Rolv RYSSDAL  
President

Signed: Marc-André EISSEN  
Registrar