

In the case of Colman 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 J. De Meyer,
Mrs E. Palm,
Mr J.M. Morenilla,
Sir John Freeland,
Mr M.A. Lopes Rocha,
Mr G. Mifsud Bonnici,
Mr J. Makarczyk,

and also of Mr M.-A. Eissen, Registrar,

Having deliberated in private on 24 June 1993,

Delivers the following judgment, which was adopted on that date:

Notes by the Registrar

* The case is numbered 2/1993/397/475. 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.

PROCEDURE

1. The case was referred to the Court on 18 January 1993 by the European Commission of Human Rights ("the Commission"), 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. 16632/90) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) by Richard Colman, a British citizen, on 11 May 1990.

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 10 and 13 (art. 10, 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 lawyer who would represent him (Rule 30).

3. The Chamber to be constituted 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 27 February 1993 the President drew

by lot, in the presence of the Registrar, the names of the other seven members, namely Mr R. Bernhardt, Mr J. De Meyer, Mrs E. Palm, Mr J.M. Morenilla, Mr M.A. Lopes Rocha, Mr G. Mifsud Bonnici and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the Delegate of the Commission and the applicant's lawyer on the organisation of the proceedings (Rules 37 para. 1 and 38).

5. On 25 May 1993 the Government communicated to the Registrar the terms of a settlement that had been reached with the applicant. Two days later the applicant confirmed his acceptance of the proposal.

The Delegate of the Commission was consulted (Rule 49 para. 2). By letter received on 10 June, the Secretary to the Commission advised the Registrar that the Delegate had no comments to make.

6. On 24 June 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).

AS TO THE FACTS

7. Richard Colman is a medical practitioner in private general practice.

In 1985 he established in the city of York a practice named the "Holistic Counselling and Education Centre". The "holistic" approach to health care involves not just treating patients, but trying to help them to explore the cause of their problems and to take more responsibility for their remedy. In 1987 he contemplated the insertion of brief, factual advertisements about his practice in local newspapers. Recognising that this did not appear to be consistent with the guidance issued in November 1986 by the General Medical Council (G.M.C.), he wrote in March 1987 seeking its advice. He also requested the G.M.C. - which is the statutory governing body of the medical profession, responsible for ensuring that standards of professional conduct are maintained - to review the existing rules on practice advertising and professional ethics.

In May 1987 the applicant was informed by the G.M.C. that it declined to review its recently amended guidance and that to advertise in the local press could lead to disciplinary action against him.

8. In August 1987 Dr Colman instituted legal proceedings seeking a declaration that the G.M.C.'s decision and policy on the dissemination of information by doctors were unlawful. He was unsuccessful before the High Court (November 1988) and thereafter before the Court of Appeal (December 1989). His petition to the House of Lords for leave to appeal was rejected in February 1990.

9. In the meantime, in November 1987, the Government submitted to Parliament a White Paper proposing a loosening of the restraints on doctors' rights to advertise their services. A report by the Monopolies and Mergers Commission, presented to Parliament in March 1989, concluded that the G.M.C.'s rules in this respect were not in the public interest. The Government accepted this report and asked the Director General of Fair Trading to negotiate with the G.M.C. to implement the report's recommendation to relax the restrictions on the publication of factual information about medical practitioners.

10. In the same month as Dr Colman applied to the Commission, in May 1990, the G.M.C. revised its advertising rules to allow, inter alia, the publication in the press of factual information about

doctors' services.

PROCEEDINGS BEFORE THE COMMISSION

11. Dr Colman lodged his application (no. 16632/90) with the Commission on 11 May 1990. He claimed that the G.M.C.'s pre-May 1990 policy on advertising in the medical profession, as it applied to him, was in violation of his right to freedom of expression as guaranteed by Article 10 (art. 10) of the Convention. He also maintained that, contrary to Article 13 (art. 13), he had no effective remedy under English law in respect of his complaint under Article 10 (art. 10).

12. The Commission declared the application admissible on 5 September 1991. In its report of 19 October 1992 (Article 31) (art. 31) the Commission expressed the opinion that there had been no violation of Article 10 (art. 10) (eleven votes to eight) or of Article 13 (art. 13) (eighteen votes to one). The full text of the Commission's opinion and of the three dissenting opinions contained in the report is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 258-D 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

13. The Registrar was advised on 25 May 1993 by the Agent of the Government that the applicant was prepared to accept the following proposal for a friendly settlement of the case:

"... without any admission by the Government that a breach of the Convention has occurred and on the conditions 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 pay the applicant £12,500".

14. Acceptance of this proposal was confirmed by the applicant's representative in a letter received by the Registrar on 27 May.

15. The Delegate of the Commission was consulted in accordance with Rule 49 para. 2 of the Rules of Court. By letter received on 10 June the Secretary to the Commission informed the Registrar that the Delegate had no comment to make on the settlement of the case or on its being struck off the Court's list.

16. The Court takes formal note of the friendly settlement reached by the Government and Dr Colman. 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).

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 28 June 1993.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar

