

In the case of Lamguindaz 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 B. Walsh,
Mr C. Russo,
Mrs E. Palm,
Mr R. Pekkanen,
Sir John Freeland,
Mr A.B. Baka,
Mr M.A. Lopes Rocha,
Mr G. Mifsud Bonnici,

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

Having deliberated in private on 23 June 1993,

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

Notes by the Registrar

* The case is numbered 48/1992/393/471. 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 by the European Commission of Human Rights ("the Commission") on 11 December 1992, 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. 16152/90) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) on 6 February 1990 by a Moroccan citizen, Mr Ahmed Lamguindaz.

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 8 and 14 (art. 8, art. 14) 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 or the

Court (Rule 21 para. 3 (b)). On 29 January 1993 the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr B. Walsh, Mr C. Russo, Mrs E. Palm, Mr R. Pekkanen, Mr A.B. Baka, Mr M.A. Lopes Rocha and Mr G. Mifsud Bonnici (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 Government of the United Kingdom ("the Government"), the Delegate of the Commission and the applicant's representative on the organisation of the proceedings (Rules 37 para. 1 and 38).

5. At various dates between 11 May 1993 and 9 June 1993 the Government and the applicant informed the Registrar that they had reached a friendly settlement subject to agreement on the question of costs and subsequently that this question had also been settled.

The Delegate of the Commission was consulted (Rule 49 para. 2) and raised no objection.

6. On 23 June 1993 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. Mr Lamguindaz was born in Morocco in 1967. He came to the United Kingdom on or about 1974 to join his father who had settled there. His mother and three brothers and sisters also moved to the United Kingdom. Two further children were born to the family. The applicant's parents were granted indefinite leave to remain in the United Kingdom in 1974.

8. The applicant has a long criminal record for minor offences of dishonesty and certain offences involving violence. On 17 May 1985 he was convicted of wounding. On 19 February 1986 the Secretary of State for the Home Department decided to make a deportation order against him on the ground that such an order was "conducive to the public good".

9. An appeal to the Immigration Appeal Tribunal, on the grounds inter alia that he spoke no Arabic and that all his family lived in the United Kingdom, was rejected on 9 June 1986. A deportation order was signed on 22 October 1986. A subsequent application to the High Court for leave to apply for judicial review of the tribunal's decision was dismissed.

10. In February 1988 the applicant was taken by his father to Morocco and left there in an attempt to keep him out of trouble with the police. He returned to the United Kingdom in September 1989 and was eventually deported on 12 May 1990 to Tangier. He has since remained in Morocco.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr Lamguindaz lodged his application with the Commission on 6 February 1990. He alleged that his deportation was in breach of Articles 8 and 14 (art. 8, art. 14) of the Convention.

12. The Commission declared the application (no. 16152/90) admissible on 17 February 1992. In its report of 13 October 1992 (Article 31) (art. 31) it expressed the opinion, by thirteen votes to one, that there had been a violation of Article 8 (art. 8) and that it was unnecessary to decide whether there had been a breach of Article 14 (art. 14). The full text of the Commission's opinion and of the dissenting opinion 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 of the Court was informed on 11 May 1993 by the Agent of the Government that the applicant was prepared to accept the following proposals for a settlement of the case subject to agreement on the question of legal costs:

"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. Revoke the deportation order against the applicant;
2. Allow the applicant to re-enter the United Kingdom;
3. Give the applicant indefinite leave to remain;
4. Allow the applicant to make an application for naturalisation;
5. Pay the costs which the applicant has actually and necessarily incurred and which are reasonable as to quantum."

14. Acceptance of these proposals was confirmed by the applicant's solicitors in a letter dated 17 May 1993. The Registrar was subsequently notified by the solicitors on 9 June 1993 that agreement had been reached with the Government that the applicant was to be paid £8,398.02 in respect of costs and expenses. This was confirmed by the Government in a letter of the same date. The Delegate of the Commission was consulted and raised no objection.

15. The Court takes formal note of the friendly settlement reached by the Government and Mr Lamguindaz. 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 28 June 1993.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar