



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

COURT (CHAMBER)

CASE OF DARNELL v. THE UNITED KINGDOM

(Application no. 15058/89)

JUDGMENT

STRASBOURG

26 October 1993

In the case of Darnell 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,

Mr N. VALTICOS,

Mr S.K. MARTENS,

Mrs E. PALM,

Mr A.N. LOIZOU,

Sir John FREELAND,

Mr A.B. BAKA,

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

Having deliberated in private on 22 April and 24 September 1993,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 September 1992, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 15058/89) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) on 2 December 1988 by a British citizen, Dr Royce Darnell.

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 Article 6 para. 1 (art. 6-1) of the Convention.

* The case is numbered 34/1992/379/453. 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.

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 26 September 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr B. Walsh, Mr C. Russo, Mr S.K. Martens, Mrs E. Palm, Mr A.N. Loizou and Mr A.B. Baka (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr N. Valticos, substitute judge, replaced Mr Thór Vilhjálmsson, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

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 applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). In accordance with the order made in consequence, the Registrar received on 29 January 1993 the applicant's memorial and, on 1 February, the Government's. On 15 April 1993 he was informed by the Commission's secretariat that the Delegate would submit his observations at the hearing.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 20 April 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Mrs A. GLOVER, Legal Counsellor,
Foreign and Commonwealth Office,

*Agent,
Counsel,*

Mr M. BAKER, Q.C.,

Mr G. BERRY, Department of Health,

Mr M. EVANS, Department of Health,

Mr J. EVANS, Trent Regional Health Authority,

Advisers;

- for the Commission

Mr L. LOUCAIDES,

Delegate;

- for the applicant

Ms F. HAMPSON, senior lecturer in law
at the University of Essex,

Counsel.

The Court heard addresses by Mr Baker for the Government, by Mr Loucaides for the Commission and by Ms Hampson for the applicant, as well as replies to its questions.

AS TO THE FACTS

6. The applicant, Dr Royce Darnell, who was born in 1929, has been unemployed since the Trent Regional Health Authority ("the RHA") terminated his employment as a consultant microbiologist and Director of the Public Health Laboratory in Derby. This case concerns the length of time that proceedings relating to this dismissal have taken.

7. Following administrative changes in the National Health Service in 1977, management problems arose in many regions including the Trent RHA. As a result of differences over staff appointment procedures, in October 1979 a local grievance procedure was initiated against Dr Darnell before the Area Health Authority ("the AHA") by the Association of Scientific, Technical and Managerial Staffs.

Although Dr Darnell was considered by the British Medical Association's legal department to have been acting within the terms of the Government's guidelines in Health Service Circular (IS) 16, the AHA endorsed the new appointments procedure.

8. Following further disagreement, a formal complaint was made in December 1980 by the AHA to the Trent RHA alleging non-compliance with laboratory staff appointment procedures. Dr Darnell was informed by letter of 19 March 1981 that a sub-committee had been set up to deal with the AHA's formal complaint.

After various investigations had been carried out, a disciplinary procedure under circular HM (61) 112 was instituted against Dr Darnell by the Trent RHA. By letter of 25 June 1982 he was suspended from duty pending the outcome.

9. After attempts to settle the case had failed, a panel of inquiry sat for thirty-two days between June and August 1983. It reported in December that the applicant was at fault in certain respects.

A sub-committee subsequently appointed by the Trent RHA recommended that Dr Darnell's employment as a consultant microbiologist be terminated. Accordingly, by letter of 16 May 1984 from the Trent RHA, the applicant was dismissed on three months' notice with effect from 19 August 1984.

10. The applicant appealed to the Secretary of State against his dismissal on 23 May 1984. A professional committee was appointed in accordance with paragraph 190 of the Terms and Conditions of Service of Hospital Medical and Dental Staff. The paragraph 190 procedure has since been replaced by a new procedure which incorporates time-limits into the various stages of an appeal to the Secretary of State against dismissal.

After holding a hearing on 14 May 1985, the professional committee reported to the Secretary of State who, in September 1985, sought further information.

11. The Secretary of State directed the RHA to offer Dr Darnell a new post in the region without managerial responsibility. In reaching this decision the Secretary of State had noted that the professional committee had been very critical of the handling of the case.

The RHA challenged this direction. The applicant was informed by the Department of Health and Social Security ("the DHSS") that in view of the unavailability of alternative employment, the case had been remitted to the Secretary of State who, not being bound by the professional committee's recommendation to allow the appeal, had decided that the termination of Dr Darnell's services in accordance with the paragraph 190 procedure should be confirmed.

12. By judicial review proceedings commenced in the High Court on 24 April 1986, the applicant challenged the fairness of the procedure leading to the Secretary of State's decision. The High Court granted a declaration that this decision was invalid and indicated that the Secretary of State should reconsider the matter. The Secretary of State did not appeal.

13. On 25 October 1986 the applicant informed the DHSS that he now sought a further paragraph 190 hearing. An exchange of correspondence took place. The DHSS attempted to convoke an ad hoc committee meeting, but this was cancelled as the applicant refused to accept such a compromise. On 29 February 1988, having proceeded on the basis of the written material which included further written submissions, the Secretary of State decided to confirm the applicant's dismissal.

Accordingly, by letter of 18 March 1988, the DHSS informed the applicant that, on the basis of the professional committee's report of 25 July 1985 and the written submissions made by Dr Darnell and the Trent RHA, re-employment was not a possibility and termination of his services was effective from the date of that letter.

14. The applicant's application for judicial review of the validity of the Secretary of State's direction was dismissed on 3 November 1988.

15. In the meantime, the applicant had also sought reinstatement, re-engagement and damages for dismissal by proceedings in the Industrial Tribunal. Two applications had been made to the Tribunal, the first on 10 August 1984 following his dismissal in May of that year and the second in May 1986 following the Secretary of State's initial rejection of his appeal against dismissal. These proceedings had been stayed from time to time at the applicant's request, pending the results of the appeal to the Secretary of State and the judicial review proceedings.

In November 1988, the second Industrial Tribunal application was revived and the first was subsequently withdrawn. A pre-hearing assessment took place on 6 February 1989 in which the Tribunal determined that a hearing could take place with no cost consequences to the applicant.

In its reserved decision of 23 February 1990, the Tribunal held that the dismissal of the applicant was not unfair. It had not been persuaded that the

applicant had in any way been prejudiced by the time which had elapsed until a decision was finally reached. He had been paid his salary in full until March 1988.

16. The applicant's appeal to the Employment Appeal Tribunal was dismissed on 8 April 1993.

17. In June 1988 a separate action in the High Court claiming damages for the applicant's suspension from work in June 1982 pending the outcome of the disciplinary procedure was struck out as it disclosed no reasonable cause of action. An appeal against the striking out was dismissed in 1990.

PROCEEDINGS BEFORE THE COMMISSION

18. Dr Darnell lodged his application (no. 15058/89) with the Commission on 2 December 1988. He complained under Article 6 para. 1 (art. 6-1) of the Convention that the "civil rights" proceedings taken against him which led to the final termination of his employment took an unreasonable length of time; he also alleged that the Secretary of State and the RHA had followed a procedure which was neither fair nor public and that the former was not independent or impartial. In addition, he claimed that, contrary to Article 13 (art. 13), he had no effective domestic remedy for those Convention complaints.

19. On 10 April 1991 the Commission declared the applicant's complaint concerning the length of the proceedings admissible and dismissed the remainder of his application. In its report of 13 May 1992 drawn up under Article 31 (art. 31), it expressed the opinion that there had been a violation of Article 6 para. 1 (art. 6-1) (unanimously).

The full text of the Commission's opinion and of the concurring opinion contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

20. Dr Darnell complained that the length of the proceedings relating to the termination of his employment by Trent RHA constituted a breach of Article 6 para. 1 (art. 6-1) of the Convention, according to which:

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 272 of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

This allegation was supported by the Commission and is no longer contested by the Government.

21. The reasonableness of the length of proceedings is to be determined with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment.

In view of the Government's concession that there has been a violation, the Court does not consider it necessary to rule on the dispute between the participants as to the starting date of the period to be taken into consideration in the present case. Even if the Court were to adopt the Government's position that, at the earliest, it should start to run from 10 August 1984, the date of the initial application to the Industrial Tribunal (see paragraph 15 above), the lapse of time of nearly nine years until the Employment Appeal Tribunal gave its reserved judgment on 8 April 1993 cannot, in the circumstances of the present case, be regarded as "reasonable".

There has therefore been a violation of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

22. Under Article 50 (art. 50) of the Convention,

"If the Court finds that a decision or 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 this Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

23. Dr Darnell sought £5,000 by way of compensation for the considerable stress and strain which he has suffered over the years in which he has been fighting legal battles instead of practising medicine.

24. The Court notes that Dr Darnell's medical competence was not challenged or criticised, but he none the less suffered serious damage to his professional career as a result of time lost from the practice of medicine.

The Court acknowledges the public apology which was given to Dr Darnell by the Government's representative at the hearing before it. It takes the view, however, that in all the circumstances further satisfaction is required and accordingly holds that the applicant should be awarded the amount claimed.

B. Costs and expenses

25. For lawyer's fees and disbursements, Dr Darnell sought reimbursement of the sum of £3,922.11 less the 6,025 French francs already paid by way of legal aid provided by the Council of Europe in respect of the proceedings before the Court. No claims were made for travel and subsistence expenses, which were covered by the above grant of legal aid.

26. Having examined the claim, which the Government accepted was reasonable, in the light of the criteria emerging from its case-law, the Court finds that the applicant should be awarded the amount claimed in its entirety and that this figure should be increased by any value-added tax that may be chargeable.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay to the applicant, within three months:
 - £5,000 (five thousand pounds) by way of compensation for non-pecuniary damage;
 - £3,922.11 (three thousand nine hundred and twenty-two pounds and eleven pence) by way of legal costs and expenses less 6,025 (six thousand and twenty-five) French francs, together with any value-added tax that may be chargeable.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 October 1993.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar