

In the case of Boyle 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 F. Gölcüklü,
Mr L.-E. Pettiti,
Mr A. Spielmann,
Mr I. Foighel,
Sir John Freeland,
Mr A.B. Baka,
Mr M.A. Lopes Rocha,
Mr L. Wildhaber,

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

Having deliberated in private on 24 February 1994,

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

* Note by the Registrar : The case is numbered 15/1993/410/489. 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.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 7 April 1993, 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. 16580/90) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) by Mr Terence Boyle, a British citizen, on 5 October 1989.

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 8 (art. 8) 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 23 April 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr L.-E. Pettiti, Mr A. Spielmann, Mr I. Foighel, Mr A.B. Baka, Mr M.A. Lopes Rocha and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal,

acting through the Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38).

5. Attempts to reach a friendly settlement gave rise, between 12 May 1993 and 23 February 1994, to a series of letters and telephone conversations between the Agent of the Government, the solicitor for the applicant and the registry of the Court, which had been authorised by the President to use its good offices for this purpose.

6. On 17 December 1993 the Government communicated to the Registrar the terms of a settlement that had been reached with the applicant. The solicitor for the applicant confirmed on 23 December that a settlement had been negotiated, subject only to agreement on the amount of the applicant's legal costs to be paid by the Government. The President of the Chamber thereupon prolonged sine die the time-limits for the filing of memorials and cancelled the public hearing scheduled for 26 January 1994. Notification of final agreement was given to the Registrar by the applicant's lawyer on 23 February 1994.

The same day the Delegate of the Commission, on being consulted (Rule 49 para. 2), advised the Registrar that he considered the settlement to be an acceptable basis for resolving the case.

7. On 24 February 1994 the Chamber 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

8. The applicant, who was born in 1938, resides in Blackburn, Lancashire. His sister, M., gave birth to a son, C., on 5 April 1980. Over the years the applicant, who lived very near to his sister's home, formed a close bond with C.

9. On application by the National Society for the Prevention of Cruelty to Children, C. was removed from the care of his mother under a Place of Safety Order on 2 February 1989 on suspicion that he had been sexually abused by her. The following day M. was arrested and charged with sexual offences. In early April 1989 the Crown Prosecution Service decided not to pursue the charges against her for lack of evidence. On 26 April 1989, however, following three interim care orders, the Juvenile Court made a full care order on behalf of Lancashire County Council ("the local authority"), finding that the allegation of sexual abuse had been made out. In evidence before the Juvenile Court the applicant was described as having been "a good father figure" to C.

10. The applicant made repeated requests for access to C. throughout C.'s placement in care. He was allowed one supervised visit in September 1989, but further access was refused by the local authority as he continued to deny that sexual abuse by his sister, the child's mother, had occurred. He had been consulted by the competent social services but, unlike M., had not been invited to attend any of the meetings or case conferences at which access to C. was discussed.

11. In July 1991 the County Court made an order freeing C. for adoption. The judge was critical of the "blinkered" approach that had been adopted by the local authority and expressed grave reservations as to the correctness of the original findings of sexual abuse. Nevertheless, he considered that adoption was in the best interests of the child and dispensed with the mother's consent.

12. Prior to the entry into force of the Children Act 1989 in

October 1991 non-parental relatives such as the applicant had no possibility of applying to court for access to a child taken into compulsory care by a local authority. In December 1991 Mr Boyle was granted leave to apply to the County Court under this Act for a contact order, but his application was refused in February 1992 following a hearing.

13. The local authority notified M. in July 1992 that the introduction of C. to an adoptive family had been stopped. The applicant was informed in late November 1993 that the local authority was planning to reintroduce contact between him and his nephew.

PROCEEDINGS BEFORE THE COMMISSION

14. Mr Boyle lodged his application (no. 16580/90) with the Commission on 5 October 1989. He complained of the refusal by the local authority to allow him access to his nephew in care and of the absence of any possibility, before the entry into force of the Children Act 1989, of applying to the courts for access. He claimed that his right to respect for family life under Article 8 (art. 8) of the Convention had thereby been infringed.

15. The Commission declared the application admissible on 15 May 1992. In its report of 9 February 1993 (Article 31) (art. 31) the Commission expressed the opinion, by fourteen votes to four, that there had been a violation of Article 8 (art. 8). 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 282-B 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

16. The Registrar was advised on 17 December 1993 by the Agent of the Government that,

"without prejudice to the Government's position on the admissibility and merits of the application, a friendly settlement ha[d] been reached on the following terms:

(a) the Government will make an ex gratia payment of £15,000 to the applicant plus his reasonable legal costs in bringing the application;

(b) the Government note that the Children Act 1989 received Royal assent on 16 November 1989 and came into force on 16 November 1991. Section 34(3) confers on any person who has obtained the leave of the court to make an application, the possibility of having the question of contact between the child placed in local authority care and that person determined by a court in proceedings complying with Article 6 para. 1 (art. 6-1) of the Convention;

(c) the Government regret that, prior to the entry into force of section 34(3) of the Children Act 1989 on 16 November 1991, the applicant had no statutory right to apply to the court for contact with his nephew".

The applicant's lawyer confirmed in writing on 23 December 1993, 4 January and 23 February 1994 that Mr Boyle had

agreed to discontinue his action before the Court on the above terms.

17. On 23 February 1994 the Secretary to the Commission informed the Registrar that the Delegate, who had been consulted in accordance with Rule 49 para. 2 of the Rules of Court, considered the settlement to be an acceptable basis for resolving the case.

18. The Court takes formal note of the friendly settlement reached by the Government and Mr Boyle. 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 February 1994.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar