



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

COURT (CHAMBER)

CASE OF WELCH v. THE UNITED KINGDOM (ARTICLE 50)

(Application no. 17440/90)

JUDGMENT

STRASBOURG

26 February 1996

In the case of Welch v. the United Kingdom¹,

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 Rules of Court A², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr R. MACDONALD,

Mr J. DE MEYER,

Mr I. FOIGHÉL,

Sir John FREELAND,

Mr L. WILDHABER,

Mr K. JUNGWIERT,

and also of Mr H. PETZOLD, *Registrar*,

Having deliberated in private on 27 January and 22 February 1996,

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

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 15 January 1994 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. 17440/90) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 (art. 25) by a British citizen, Mr Peter Welch, on 22 June 1990.

2. In a judgment of 9 February 1995 ("the principal judgment", Series A no. 307-A), the Court found that the confiscation order of 24 August 1988 made against the applicant following his conviction for drugs offences amounted to the retrospective imposition of a penalty in breach of Article 7 para. 1 (art. 7-1) of the Convention (*ibid.*, pp. 11-15, paras. 22-36, and point 1 of the operative provisions).

¹ The case is numbered 1/1994/448/527. 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.

² Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

The Court also held that the respondent State was to pay the applicant, within three months, £13,852.60, less the sums paid by way of legal aid, in respect of costs and expenses (*ibid.*, p. 15, paras. 40-41, and point 2 of the operative provisions).

3. As the question of the application of Article 50 (art. 50) was not ready for decision in respect of pecuniary and non-pecuniary damage, the Court reserved it and invited the Government and the applicant to submit in writing, within three months, their observations on the matter and, in particular, to notify the Court of any agreement they might reach (*ibid.*, p. 15, para. 39, and point 3 of the operative provisions).

4. The negotiations for an agreement having proved unsuccessful, the Registrar received memorials from the Government and the applicant on 4 and 5 May 1995 respectively concerning the question of damage.

5. In accordance with an order of the President of 16 May 1995, comments on the claims made by the applicant were submitted by the Government on 18 July. The applicant replied to these submissions on 18 September. On 20 October a further comment was received from the Government.

6. On 6 November 1995 the Secretary to the Commission informed the Registrar that the Delegate had no observations to make as regards the above submissions.

7. Mr R. Pekkanen, who was unable to take further part in the case, was subsequently replaced by Mr F. Gölcüklü (Rule 22 para. 1 of Rules of Court A).

AS TO THE LAW

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

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

In reliance upon this provision the applicant sought compensation for alleged pecuniary and non-pecuniary damage and reimbursement of costs and expenses incurred during the Article 50 (art. 50) phase of the proceedings.

9. It is not in dispute that the confiscation order made under the Drug Trafficking Offences Act 1986 ("the DTOA") has not been enforced. Indeed it is the understanding of the Court that the order, which has been found to be in breach of Article 7 para. 1 (art. 7-1) of the Convention, will not be enforced against the applicant.

10. Since the discussions that followed the principal judgment did not lead to agreement, the conditions for applying Article 50 (art. 50) have been satisfied.

A. Pecuniary damage

11. The applicant pointed out that as a result of the restraint order of 31 July 1987 made pursuant to section 7 of the DTOA he was prevented from, *inter alia*, "... disposing of, diminishing or otherwise in any way dealing with any ... property ... within or without the jurisdiction ...". In consequence, he incurred various pecuniary losses for which he should be compensated in order to place him, as far as possible, in the situation he would have been in had the proceedings under the DTOA not been instituted against him.

He made the following claims under this head:

- (1) £110,000 loss of rental relating to his villa in Portugal;
- (2) £16,300 as a result of the villa in Portugal falling into disrepair;
- (3) £174,296 due to lost capital in properties situated in the United Kingdom which were said to have diminished in market value since the restraint order was made and the cost of repairs; and
- (4) £1000 which had been taken from him by the police when he was arrested.

12. The Government contended, *inter alia*, that the claims were wholly unwarranted and extravagant. They maintained that the applicant had suffered no actual prejudice and that he had failed to prove any direct or even indirect causal link between the violation and the alleged pecuniary damage. Moreover, as regards his various properties he could have applied to the High Court to obtain a variation of the terms of the restraint order. In their submission the Court should be on its guard lest compensation is awarded in respect of damage which resulted, not from the confiscation order, but from the fact that the applicant was no longer able to indulge in drug trafficking after his arrest, with the result that his source of income came to an end.

13. The Court considers that the applicant's claim must be rejected under this head. In the first place it notes that the applicant did not complain of the effects of the restraint order under the DTOA before the Convention institutions, his complaint being limited to the retrospective application of the confiscation order in violation of Article 7 para. 1 (art. 7-1) of the Convention. Moreover, as regards the villa in Portugal, it was open to him under the relevant provisions of the DTOA to apply to the High Court for a variation of the restraint order to enable him to let the property if he so desired. Since rental and upkeep of the property were also in the interests of the national authorities who were seeking the confiscation order there is no reason to suppose that they would have objected to any such application

designed to maintain the value of the asset. Indeed it is noteworthy in this respect that a variation of the order was sought and granted on 6 October 1987 in respect of the applicant's house in the United Kingdom (No. 2 Antique Cottages, Newcastle Emlyn, Wales).

14. As regards the real property in the United Kingdom, the Court observes that one of the houses (7 Uplands Crescent, Swansea, Wales), supposedly affected by the restraint order, in fact belonged to the applicant's wife who was not associated in the proceedings before it. It was also open to her to apply to the High Court for a variation or discharge of the order on the grounds that her husband was not the owner and had no interest in the property. In addition, the other property, which was in the applicant's name (2 Antique Cottages), had been sold, as indicated above. The proceeds of sale were placed on deposit and have been returned with interest since the Court's principal judgment. No basis for his claim in respect of these properties has thus been established.

15. Finally no claim can arise in respect of the £1,000 which was seized when the applicant was arrested. This sum was eventually forfeited by a court order under the Misuse of Drugs Act 1971 and not as a result of the confiscation order under the DTOA.

16. In sum, the Court does not consider that the alleged losses can legitimately be said to result from the application to Mr Welch of the confiscatory provisions of the DTOA.

B. Non-pecuniary damage

17. The applicant claimed more than £19,000 under this head for loss of amenities. He referred in this context to, inter alia, problems with creditors, debts, worries and financial hardship generally as well as the fact that his wife and children were denied access to her property.

18. The Government pointed out that the applicant's family were not "victims" within the meaning of Article 50 (art. 50) and submitted that no compensation should be paid in this connection.

19. The Court considers that, having regard to the circumstances of the case, the finding of a violation of Article 7 para. 1 (art. 7-1) of the Convention constitutes, in itself, sufficient just satisfaction as to the alleged non-pecuniary damage.

C. Costs and expenses

20. The applicant claimed £2,750 for costs and expenses referable to the Article 50 (art. 50) phase of the proceedings.

21. The Government submitted that the Court should refuse the claim for costs if it rejects the applicant's claim for damage.

22. Since the applicant's claims for compensation have failed, the Court sees no reason why an award in respect of costs and expenses should be made.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the finding of a violation of Article 7 para. 1 (art. 7-1) of the Convention constitutes, in itself, sufficient just satisfaction as to the alleged non-pecuniary damage;
2. Dismisses the remainder of the applicant's claim for just satisfaction under Article 50 (art. 50) of the Convention.

Done in English and in French, and notified in writing on 26 February 1996 pursuant to Rule 55 para. 2, second sub-paragraph, of Rules of Court A.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar