



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

AFFAIRE ROBINS c. ROYAUME-UNI

CASE OF ROBINS v. THE UNITED KINGDOM

(118/1996/737/936)

ARRET/JUDGMENT

STRASBOURG

23 septembre/September 1997

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SUMMARY¹

Judgment delivered by a Chamber

United Kingdom – length of costs proceedings (Legal Aid Act 1988)

I. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

Proceedings to determine amount of costs payable by legally aided applicants after litigation between neighbours must be seen as continuation of substantive litigation and accordingly as part of determination of “civil rights and obligations”.

B. Compliance

Delays of ten months owing to mistake on part of legal aid assessment authorities and sixteen months owing to inactivity by court staff, in context of proceedings lasting over four years to determine relatively straightforward dispute, were unreasonable.

Conclusion: violation (unanimously).

II. ARTICLE 50 OF THE CONVENTION

A. Damage

Pecuniary damage: no causal link established.

Non-pecuniary damage: finding of violation constitutes sufficient just satisfaction.

B. Costs and expenses: award of part of sum claimed.

Conclusion: respondent State to pay applicants specified sum for costs and expenses (unanimously).

COURT’S CASE-LAW REFERRED TO

23.3.1994, *Silva Pontes v. Portugal*; 26.9.1996, *Di Pede v. Italy*; 26.9.1996, *Zappia v. Italy*; 17.12.1996, *Duclos v. France*; 25.2.1997, *Findlay v. the United Kingdom*; 19.3.1997, *Hornsby v. Greece*

1. This summary by the registry does not bind the Court.

In the case of Robins v. the United Kingdom¹,

The European Court of Human Rights, sitting, in accordance with Article 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. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr I. FOIGHEL,

Mr A.N. LOIZOU,

Sir John FREELAND,

Mr A.B. BAKA,

Mr L. WILDHABER,

Mr D. GOTCHEV,

Mr U. LÖHMUS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 2 June and 1 September 1997,

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 16 September 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 22410/93) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 by two British citizens, Mr Geoffrey Robins and Mrs Margaret Robins, on 14 March 1993.

Notes by the Registrar

1. The case is numbered 118/1996/737/936. 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 of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 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 § 1 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicants stated that they wished to take part in the proceedings and sought leave to present their own case. However, the President of the Chamber, Mr R. Bernhardt, declined to grant the requested leave and the applicants subsequently designated the lawyer who would represent them (Rule 30 § 1).

3. The Chamber to be constituted included *ex officio* Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention), and Mr Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 17 September 1996, in the presence of the Deputy Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr I. Foighel, Mr A.N. Loizou, Mr A.B. Baka, Mr L. Wildhaber, Mr D. Gotchev and Mr U. Löhmus (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Deputy Registrar, consulted the Agent of the United Kingdom Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence and subsequent extensions of the time-limit granted at the request of the applicants' solicitors, the Registrar received the Government's memorial on 2 April 1997 and the applicants' memorial on 11 April 1997.

5. On 25 April 1997 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).

6. In the light of this decision, the Government, applicants and Commission were invited to submit written comments on the matters raised in the memorials. The Registrar subsequently received letters from the Government's Agent and the applicants' solicitors on the subject, *inter alia*, of the applicants' claims under Article 50 of the Convention.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

A. Background

7. The applicants, Mr and Mrs Robins, born respectively in 1942 and 1943, are resident in Crediton, Devon and in London.

8. The background to the case is a dispute between neighbours over sewerage. Initially the applicants' neighbours, Mr and Mrs T., instituted proceedings seeking damages for problems experienced with their sewerage, allegedly caused by work carried out by the applicants. Mr and Mrs T. won their case. On 26 February 1988 the applicants then instituted proceedings against Mr and Mrs T. in the Exeter County Court in Devon, alleging that the latter's sewage was seeping onto their land. On 1 May 1991, Judge Clarke gave judgment against the applicants. Their appeal was subsequently dismissed by the Court of Appeal.

B. The costs proceedings

9. In England and Wales it is usual that the unsuccessful party to litigation pays the costs of the successful party (see paragraph 19 below). On 31 May 1991, Mr and Mrs T., who were not in receipt of legal aid, requested a hearing to determine costs issues. The applicants had been and were legally aided throughout the litigation to appeal stage. Although this did not affect the amount of costs Mr and Mrs T. would be entitled to receive, after having made an order for costs it would be necessary for the judge to assess the applicants' means for the purposes of section 17 of the Legal Aid Act 1988 ("the 1988 Act" – see paragraph 20 below).

10. After hearings on 5 and 6 August 1991, the matter was adjourned until 19 September 1991, to be heard at Torquay County Court, also in Devon. As the question of costs could not be resolved because of factual disputes and conflict between the parties, on 24 September 1991 Judge Clarke made a direction that the inquiry should be adjourned and not restored until a number of points concerning the applicants' entitlement to legal aid had been clarified. In particular, information was sought as to

whether the applicants had advised the Legal Aid Board (“LAB”) of any change in their circumstances and whether revocation of their legal-aid certificate, if necessary, would have any retrospective effect.

11. On 25 November 1991, the court received a report from the LAB outlining events from the time the applicants first applied for legal aid. This report was sent to the parties on 14 January 1992, when they were informed that the matter could be re-listed for hearing. However, on 4 February 1992, the LAB informed the court that a fresh Department of Social Security (“DSS”) assessment of the applicants’ means was required in view of the fact that they had separated. The DSS later explained, in a letter filed with the court on 10 November 1992, that a delay of nine months had been caused because of a misapprehension in this respect; in fact, the applicants had not separated.

12. The restored hearing was held on 12–13 November 1992 before Judge Darwall-Smith, as Judge Clarke had fallen ill. Examining the criteria set out in section 17 (1) of the 1988 Act (see paragraph 20 below), the judge ordered that 4,599 pounds sterling (GBP), which had previously been retained by the LAB following an award of damages to the applicants resulting from a successful negligence action against a firm of solicitors, should be paid to Mr and Mrs T. forthwith and that the applicants should in addition pay them GBP 6,000 in instalments of GBP 100 per month.

C. The appeal against the costs order

13. The applicants sought legal aid to appeal against this decision. On 11 January 1993 they applied for an extension of time, since the time-limit for appealing the costs order had expired on 11 December 1992. Subsequently queries were raised by a lawyer in the Civil Appeals Office as to whether leave to appeal was required, and the matter was referred to the registrar.

14. In March 1993, September 1993 and March 1994 the applicants contacted the Court of Appeal asking why there was a delay in dealing with their application.

15. On 10 April 1994, the registrar directed that leave was not required to appeal against the costs order. With a view to avoiding the time and expense of holding two hearings, one before him for the extension of time and another before the full Court of Appeal, he referred the application to the full court to determine the question of the time extension and, if granted, immediately to hear the appeal.

16. The applicants were requested to lodge the relevant documents by 2 May 1994. Extensions of this time-limit were granted on 25 April, 24 May, 16 June, 6 July and again on 27 July 1994 at the request of the applicants, because they were experiencing difficulty in obtaining transcripts and judge's notes of hearings from the first-instance courts. It later transpired that Judge Clarke's notes had been either lost or did not exist. On 6 October 1994, the registrar granted the applicants' request that transcripts of the judgment of Judge Darwall-Smith be produced at public expense.

17. Another extension of the time-limit for the submission of documents was granted, upon the applicants' request, on 16 February 1995. On 6 March 1995 the documents were finally lodged with the Court of Appeal's Office and on 29 March 1995 the application was listed for hearing. After the hearing on 19 June 1995, the Court of Appeal confirmed Judge Darwall-Smith's judgment of 13 November 1992 and dismissed the appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal aid

18. Legal aid is available to litigants in the English courts subject to various requirements as to means and the merits of the case in question. Financial assessments of a litigant's disposable income and capital are carried out by specialist staff of the Benefits Agency's Legal Aid Assessment Office. The resources of the litigant's spouse are treated as belonging to the litigant unless they are living "separate and apart" (see the Civil Legal Aid (Assessment of Resources) Regulations 1989 (Statutory Instrument 1989 no. 338), Regulations 4 and 7).

B. Assessment of costs against a legally aided litigant

19. In the English courts, the award of costs generally (in all cases, including those where one or more parties are legally aided) is a matter for the discretion of the court (see the Supreme Court Act 1981, section 51). However, rules of court lay down certain principles which are normally applied in the exercise of this discretion, including the principle that the

unsuccessful party to litigation pays the costs of the successful party (see the Rules of the Supreme Court, Order 62, Rule 3, and the County Court Rules, Order 38, Rule 1 (3)).

20. This principle is not affected by the fact that an unsuccessful litigant is legally aided. However, after an order for costs has been made against such a person, the court which tried or heard the proceedings must determine how much of these costs it would be reasonable for the legally aided litigant to pay, in accordance with section 17 (1) of the Legal Aid Act 1988, which provides:

“The liability of a legally assisted party under an order for costs made against him with respect to any proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including the financial resources of all the parties and their conduct in connection with the dispute.”

PROCEEDINGS BEFORE THE COMMISSION

21. In their application to the Commission of 14 March 1993 (no. 22410/93) Mr and Mrs Robins made a number of complaints under Articles 6, 8, 13 and 14 of the Convention concerning the substantive proceedings relating to their dispute with their neighbours; in addition, they complained under Article 6 § 1 of the Convention about the length of the costs proceedings.

22. On 22 February 1995, the Commission declared inadmissible the complaints concerning the substantive proceedings. The complaint concerning the costs proceedings was declared admissible on 18 January 1996. In its report of 4 July 1996 (Article 31), it expressed the opinion, by sixteen votes to nine, that there had been no violation of Article 6 § 1 of the Convention because the proceedings did not fall within the scope of that provision. 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 judgment¹.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT

23. The Government in their memorial asked the Court to find that Article 6 § 1 of the Convention was not applicable to the proceedings in question or, in the alternative, that there had been no violation of that provision.

The applicants asked the Court to find a violation and to award them compensation under Article 50 of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicants contended that the costs proceedings were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which provides:

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

The Government and the Commission were both of the opinion that Article 6 § 1 was not applicable.

A. Applicability of Article 6 § 1

25. The applicants disputed that Judge Clarke had made an order for costs on 1 May 1991; in their view the proceedings were therefore both for the determination of their basic liability to pay costs and the assessment of the amount of their contribution. They submitted that these proceedings fell within the scope of Article 6 § 1 of the Convention because they could not be divorced from the substantive proceedings, which undoubtedly involved “the determination of ... civil rights and obligations”. Furthermore, they reminded the Court that the sums of money at stake were substantial and that they were finally ordered to pay a contribution in excess of 10,000 pounds sterling (GBP).

26. The Government contended that Judge Clarke had ordered that the applicants pay Mr and Mrs T.’s costs on 1 May 1991. The proceedings in question did not, therefore, concern a determination of the substantive rights of the parties to the litigation or of the liability of Mr and Mrs Robins to pay

their neighbours' costs; they were instead concerned with an investigation by the court under section 17 of the 1988 Act into the applicants' financial circumstances and the assessment of any contribution which it was reasonable for them to pay (see paragraph 20 above). This investigation fell within the scope of public law and did not concern "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention.

27. The Commission in its report found that the costs proceedings were not in any way linked to the substantive dispute between the applicants and their neighbours, since the dispute over costs arose after the substantive dispute had been resolved and had no relevance to it. It invoked its case-law to the effect that subsidiary proceedings to decide costs fell outside the scope of Article 6 § 1.

28. The Court recalls that Article 6 § 1 of the Convention requires that all stages of legal proceedings for the "determination of ... civil rights and obligations", not excluding stages subsequent to judgment on the merits, be resolved within a reasonable time (see the *Silva Pontes v. Portugal* judgment of 23 March 1994, Series A no. 286-A, p. 14, §§ 33–36; the *Di Pede v. Italy* and *Zappia v. Italy* judgments of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1384 and 1411–12, §§ 24 and 20, respectively; and, *mutatis mutandis*, the *Hornsby v. Greece* judgment of 19 March 1997, *Reports* 1997-II, pp. 510–11, § 40).

29. The Court observes that the legal costs which formed the subject matter of the proceedings in question were incurred during the resolution of a dispute between neighbours which undoubtedly involved "the determination of ... civil rights and obligations" (see paragraph 8 above). It notes that there was some disagreement between the Government and the applicants as to whether Judge Clarke had ordered on 1 May 1991 that Mr and Mrs T., the successful parties to the litigation, should have their costs paid by the applicants. However, whether the proceedings in question were for the determination of the applicants' liability to pay their neighbours' costs or were limited to an investigation under section 17 of the 1988 Act into the applicants' financial circumstances and the size of the contribution it was reasonable for them to pay, the Court considers that the costs proceedings, even though separately decided, must be seen as a continuation of the substantive litigation and accordingly as part of a "determination of ... civil rights and obligations" (see, *mutatis mutandis*, the authorities cited in the preceding paragraph).

It follows that Article 6 § 1 is applicable.

B. Compliance with Article 6 § 1

1. Period to be taken into consideration

30. The applicants, Government and Commission all agreed that the relevant period began on 1 May 1991 when Judge Clarke determined the substantive dispute (see paragraph 8 above) and ended on 19 June 1995, with the Court of Appeal's dismissal of the applicants' appeal against the judgment on costs (see paragraph 17 above). The Court sees no reason for departing from this approach.

2. Reasonableness of the length of proceedings

31. Mr and Mrs Robins pointed out that it had taken over four years to determine the costs issues. They complained, *inter alia*, about the delay between February and November 1992 caused by the Legal Aid Board's mistaken belief that they had separated (see paragraph 11 above) and the period between January 1993 and April 1994 when apparently no action was taken by the Civil Appeals Office to process the application (see paragraphs 13–15 above).

32. The Government submitted that the State authorities could not be held responsible for the entire length of the proceedings. In particular, they stressed that the failure of the parties to the litigation to come to any agreement over the facts prolonged the dispute, as did Judge Clarke's ill-health and the applicants' decision to appeal against Judge Darwall-Smith's judgment (see paragraphs 10, 12 and 13 above).

33. The Court recalls that the reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case, having regard in particular to the complexity of the case and the conduct of the parties to the dispute and the relevant authorities (see for example the *Duclos v. France* judgment of 17 December 1996, Reports 1996-VI, pp. 2180–81, § 55).

34. The Court notes that it took over four years to resolve what may be regarded as a relatively straightforward dispute over costs. It is undoubtedly true that the State authorities cannot be held responsible for the totality of the delays in the case. Nonetheless, as the Department of Social Security itself explained, ten months were wasted between February and November 1992 because of that Department's mistaken belief that the applicants had separated (see paragraph 11 above). Moreover, there was a period lasting approximately sixteen months, between the application for an extension of time for the filing of notice of appeal in January 1993 and the

registrar's directions in April 1994, when it would seem that the court authorities were totally inactive (see paragraphs 13–15 above). Basing itself on these two periods, in the context of the overall length of the proceedings, the Court concludes that there was an unreasonable delay in dealing with the applicants' case.

35. There has accordingly been a violation of Article 6 § 1 in that the applicants' "civil rights and obligations" were not determined within "a reasonable time".

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

36. Mr and Mrs Robins claimed compensation under Article 50 of the Convention, which provides:

"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."

A. Pecuniary damage

37. The applicants submitted that the delay in determining the costs proceedings gave rise to an atmosphere of suspicion and intrigue which prejudiced them and resulted in their liability to pay a contribution towards their neighbours' costs in excess of GBP 10,000 (see paragraphs 12 and 17 above).

38. The Government did not accept that there should be any liability for compensation based on an alleged "atmosphere of suspicion and intrigue" to the prejudice of the applicants in the County Court proceedings.

39. There is no evidence which would permit the Court to assume that the costs issue would have been decided any differently had the violation of Article 6 § 1 not occurred. For this reason, it does not award any compensation in respect of the alleged pecuniary damage (see, *mutatis mutandis*, the Findlay v. the United Kingdom judgment of 25 February 1997, Reports 1997-I, p. 284, § 85).

B. Non-pecuniary damage

40. In addition, the applicants claimed compensation for the stress caused by the mistakes and delays of the administrative and judicial authorities and the time consumed by the proceedings before the domestic courts.

41. The Court considers that in the circumstances of the case a finding of violation constitutes sufficient satisfaction for any non-pecuniary damage suffered.

C. Costs and expenses

42. The applicants claimed their personal costs and expenses arising from the Strasbourg proceedings: Mrs Robins had spent approximately forty days working on the case, for which she asked to be compensated at a level equivalent to that of a solicitor or barrister, and they had incurred travel and other expenses amounting to approximately GBP 320. In addition they claimed solicitors' costs of GBP 1,583.25 (exclusive of value-added tax – "VAT") and counsel's fees of GBP 750 (exclusive of VAT).

43. The Government informed the Court that they did not agree that it would be proper to compensate the applicants for the time spent preparing the case at the level sought, although they accepted the amounts claimed in respect of solicitors' costs and counsel's fees.

44. The Court awards GBP 2,700, together with any VAT which may be chargeable, in respect of legal costs and expenses.

D. Default interest

45. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage alleged by the applicants;

3. *Holds*

(a) that the respondent State is to pay the applicants, within three months, in respect of costs and expenses, 2,700 (two thousand seven hundred) pounds sterling together with any value-added tax which may be chargeable;

(b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 1997.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar