



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

CASE OF BOWMAN v. THE UNITED KINGDOM

(141/1996/760/961)

JUDGMENT

STRASBOURG

19 February 1998

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SUMMARY¹

Judgment delivered by a Grand Chamber

United Kingdom – prosecution following distribution of leaflets by abortion campaigner prior to general election (Representation of the People Act 1983, section 75)

I. GOVERNMENT’S PRELIMINARY OBJECTION (applicant’s status as “victim”)

Prosecution brought against applicant – indication to her that she ran risk of being prosecuted again in future unless she modified her conduct – in these circumstances she could claim to have been directly affected by law and therefore to be “victim” within meaning of Article 25 § 1 of the Convention.

Conclusion: objection dismissed (unanimously).

II. ARTICLE 10 OF THE CONVENTION

A. Existence of restriction

Prohibition in section 75 of 1983 Act of expenditure in excess of GBP 5 by unauthorised persons on publications etc. during election period amounted to restriction on freedom of expression.

B. “Prescribed by law”

Restriction was “prescribed by law”.

C. Legitimate aim

Protection of rights of others, namely candidates for election and electorate.

D. “Necessary in a democratic society”

States have margin of appreciation in striking balance between rights to free elections and freedom of expression.

Section 75 of 1983 Act operated for all practical purposes as total barrier to applicant’s publishing information with a view to influencing voters in favour of anti-abortion candidate – not necessary to set limit on expenditure as low as GBP 5 to achieve aim of securing equality between candidates – restriction disproportionate.

Conclusion: violation (fourteen votes to six).

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

III. ARTICLE 50 OF THE CONVENTION

A. Non-pecuniary damage: finding of a violation sufficient.

B. Costs and expenses: partial reimbursement of amount claimed.

Conclusion: respondent State to pay specified sum to applicant (unanimously).

COURT'S CASE-LAW REFERRED TO

6.11.1980, *Sunday Times* v. the United Kingdom (no. 1); 8.7.1986, *Lingens* v. Austria;
2.3.1987, *Mathieu-Mohin and Clerfayt* v. Belgium; 26.10.1988, *Norris* v. Ireland

In the case of Bowman v. the United Kingdom¹,

The European Court of Human Rights, sitting, pursuant to Rule 51 of Rules of Court A², as a Grand Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr THÓR VILHJÁLMSOON,

Mr L.-E. PETTITI,

Mr B. WALSH,

Mr R. MACDONALD,

Mr C. RUSSO,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mrs E. PALM,

Mr A.N. LOIZOU,

Sir John FREELAND,

Mr A.B. BAKA,

Mr M.A. LOPES ROCHA,

Mr L. WILDHABER,

Mr D. GOTCHEV,

Mr P. JAMBREK,

Mr U. LÖHMUS,

Mr E. LEVITS,

Mr J. CASADEVALL,

Mr P. VAN DIJK,

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

Having deliberated in private on 25 October 1997 and 29 January 1998,

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

Notes by the Registrar

1. The case is numbered 141/1996/760/961. 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.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) and by the Government of the United Kingdom of Great Britain and Northern Ireland (“the Government”) on 19 October 1996 and on 7 January 1997 respectively, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 24839/94) against the United Kingdom lodged with the Commission under Article 25 by Mrs Phyllis Bowman, a British citizen, on 11 March 1994.

The Commission’s request referred to Articles 44 and 48 of the Convention and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46). The object of the request and of the Government’s application 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 10 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (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), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 29 October 1996, in the presence of the 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 B. Walsh, Mr C. Russo, Mr A. Spielmann, Mr A.N. Loizou, Mr M.A. Lopes Rocha and Mr P. Jambrek (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 Registrar, consulted the Agent of the Government, the applicant’s representative 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 an extension of the time-limit granted at the request of the applicant, the Registrar received the Government’s memorial on 3 June 1997 and the applicant’s memorial on 18 July 1997.

5. In accordance with the decision of the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 27 August 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr D. BENTLEY, Foreign and Commonwealth Office,	<i>Agent,</i>
Mr D. PANNICK QC,	
Mr D. ANDERSON,	<i>Counsel,</i>
Mr R. CLAYTON, Home Office,	<i>Adviser;</i>

(b) *for the Commission*

Mr L. LOUCAIDES,	<i>Delegate;</i>
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(c) *for the applicant*

Mr G. ROBERTSON QC,	<i>Counsel,</i>
Mr D. PRICE,	<i>Solicitor.</i>

The Court heard addresses by Mr Loucaides, Mr Pannick and Mr Robertson.

6. Following deliberations held on 29 August 1997 the Chamber decided to relinquish jurisdiction forthwith in favour of a Grand Chamber (Rule 51).

7. The Grand Chamber to be constituted included *ex officio* Mr Ryssdal, the President of the Court, and Mr Bernhardt, the Vice-President, together with the other members and substitute judges of the original Chamber, the latter being Mrs E. Palm and Mr J. Casadevall (Rule 51 § 2 (a) and (b)). On 30 August 1997 the President, in the presence of the Registrar, drew by lot the names of the nine additional judges needed to complete the Grand Chamber, namely Mr Thór Vilhjálmsson, Mr R. Macdonald, Mr N. Valticos, Mr A.B. Baka, Mr L. Wildhaber, Mr D. Gotchev, Mr U. Lõhmus, Mr E. Levits and Mr P. van Dijk (Rule 51 § 2 (c)).

8. Having taken note of the agreement of the Agent of the Government and the concurring opinions of the Delegate of the Commission and of the applicant, the Court decided on 25 October 1997 that it was not necessary to hold a further hearing following the relinquishment of jurisdiction by the Chamber (Rule 38, taken together with Rule 51 § 6).

9. Subsequently, Mr Bernhardt replaced Mr Ryssdal, who was unable to take part in the further consideration of the case, as President of the Grand Chamber (Rule 21 § 5).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. Mrs Phyllis Bowman was born in 1926 and lives in London. She is the executive director of the Society for the Protection of the Unborn Child ("SPUC"), an organisation of approximately 50,000 members which is opposed to abortion and human embryo experimentation and seeks changes to the present United Kingdom law which permits abortion up to twenty-two weeks and embryo experimentation up to fourteen days.

11. The major political parties have no policies with regard to abortion and embryo experimentation: these are regarded as moral issues and members of Parliament are allowed to vote on proposed legislation according to their consciences. Mrs Bowman and SPUC therefore took the view that, if electors were to be in a position to bring about changes to the law through their choice of representative, it was important for them to be informed of the opinions of candidates standing for election with regard to abortion and related issues.

12. In the period immediately before the parliamentary elections in April 1992, Mrs Bowman therefore arranged to have some one and a half million leaflets distributed in constituencies throughout the United Kingdom, including, in the constituency of Halifax, 25,000 copies of a leaflet which read as follows:

"We are not telling you how to vote, but it is essential for you to check on Candidates' voting intentions on abortion and on the use of the human embryo as a guinea-pig.

Terry Martin, Conservative.

Mr Martin has publicly declared his firm commitment to defending the unborn child. If elected, he would vote to tighten the grounds for abortion to stop abortion on demand. He would vote to stop abortion after 24 weeks, as the law currently allows abortion up to birth for handicapped babies and on other grounds. Would vote to stop the creation and use of human embryos as guinea-pigs for drug testing.

Alison Mahon, Labour.

Mrs Mahon is a leading pro-abortionist. As an MP she voted to allow abortion up to birth for handicapped babies. She voted for the compulsory enrolment on a published register of doctors with a conscientious objection to abortion despite warnings that it could be used as a blacklist. She also voted to allow human embryos to be used as guinea-pigs in programmes including the testing of drugs and other experiments.

Ian Howell, Liberal Democrat.

If elected, Mr Howell would vote for the tightening of the grounds for abortion to stop abortion on demand. He would vote to reduce the time-limit to 24 weeks or less, where the law currently allows abortion up to birth for handicapped babies and on other grounds. He would vote to protect human embryos from being used as guinea-pigs in research programmes.

THE SOCIETY FOR THE PROTECTION OF THE UNBORN CHILD

On the reverse side of the leaflet, together with a picture marked “an unborn baby ten weeks after conception”, was printed:

“The First Weeks of Life

Day 1: Conception – sperm and ovum meet in fertilisation. Genetic make-up complete. Colour of eyes, hair, sex and even build determined. A unique individual is present in the womb’s fallopian tube.

Day 12: Has travelled to the womb and implanted there.

Day 17: Development of own blood cells.

Day 21: Heart starts to beat. This is at least as dramatic as birth, but far less dramatic than fertilisation.

Day 26: Foundation of central nervous system established.

Day 30: Regular blood flow within closed vascular system. Ears and nose start to develop.

Day 42: Skeleton and reflexes present. Liver, kidneys and lungs formed. Responds to touch around the mouth.

Day 45: Electrical brainwave patterns can be recorded.

Day 56: All organs functioning except the lungs; the baby only has to grow and mature now, just as a child grows into an adult.

Day 65: The baby can make a fist and will grasp an object stroking his palm; leaps up and down in the womb with movements co-ordinated.

Week 12: Entire surface of the body sensitive to touch.

Week 16: Baby is half birth length; the heart pumps 50 pints of blood daily.

Week 28: Eyes open. Baby can hear mother’s digestive processes, heartbeat and her voice, as well as sounds outside her body.

9th Month: Birth – just another stage in an already well-advanced process. From the above it is clear that the baby can feel pain at a very early stage. We are, therefore, destroying babies painfully up to 6 months after conception, and in some cases, such as handicap, up to birth.”

13. Mrs Bowman was charged with an offence under subsections 75(1) and (5) of the Representation of the People Act 1983 (“the 1983 Act”), which prohibits expenditure of more than five pounds sterling (“GBP”) by an unauthorised person during the period before an election on conveying information to electors with a view to promoting or procuring the election of a candidate (see paragraphs 17–19 below).

14. At Mrs Bowman's trial at Southwark Crown Court on 27 September 1993, the judge directed her acquittal, because the summons charging her with the offence had not been issued within one year of the alleged prohibited expenditure, in accordance with the time-limit stipulated in section 176 of the 1983 Act. The proceedings were, nonetheless, reported in the press.

15. In 1979, Mrs Bowman had been convicted of an offence under similar legislation in respect of a leaflet distributed prior to the Ilford North by-election and in 1982 she had also been convicted in respect of a leaflet distributed during the elections for the European Parliament. On both occasions she was ordered to pay a fine and the prosecution costs.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Parliamentary elections

16. The date of a general election is chosen by the incumbent Prime Minister and is normally announced between four and six weeks before polling day.

17. For electoral purposes the United Kingdom is divided into constituencies. Each constituency is represented by a single member of Parliament, the person who received the greatest number of votes in his or her constituency. Most candidates are selected by the main, national political parties, although some stand as independent. A candidate's nomination for election must be signed by ten people registered to vote in the constituency. Each candidate must deposit GBP 500 with the constituency returning officer. If he or she does not receive at least 5% of the votes validly cast, this deposit will be forfeited.

B. Control of election expenditure

18. Parliamentary candidates in the United Kingdom receive no State funding for their campaigns. To safeguard the position of candidates without access to substantial resources, the amount of expenses which may be incurred by a candidate before, during or after an electoral campaign is controlled by statute (1983 Act, section 76). The amount varies slightly depending on the size of the constituency, but the average is currently GBP 8,300. To ensure that this limit is not circumvented, all election expenditure by a candidate must go through an election agent, who is required to submit an account after the election (1983 Act, sections 73, 76 and 81).

19. Under section 75(1) of the 1983 Act, any expenditure incurred to promote the election of a candidate by any person other than the candidate or his or her agent is prohibited:

“No expenses shall, with a view to promoting or procuring the election of a candidate at an election, be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account –

- (a) of holding public meetings or organising any public display; or
- (b) of issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate, but paragraph (c) of this subsection shall not –

(i) restrict the publication of any matter relating to the election in a newspaper or other periodical or in a broadcast made by the British Broadcasting Corporation ... [or the Independent Broadcasting Authority];

(ii) apply to any expenses not exceeding in aggregate the sum of GBP 5.”

The words “with a view to promoting or procuring the election of a candidate” in this subsection have been interpreted by the House of Lords to include the intention to prevent the election of a particular candidate or candidates (*Director of Public Prosecutions v. Luft* [1977] Appeal Cases 962).

20. Mrs Bowman was charged with an offence under section 75(5) of the 1983 Act, which provides:

“If a person –

- (a) incurs, or aids, abets, counsels or procures any other person to incur, any expenses in contravention of [section 75] ... he shall be guilty of a corrupt practice...”

21. The maximum penalty for offences tried on indictment under subsections 75(1) and (5) is one year’s imprisonment and/or a fine up to GBP 5,000. In addition, a person convicted may be disqualified for up to five years from voting in elections, being elected to or sitting in the House of Commons or holding any judicial or public office (1983 Act, sections 160(4), 168(1) and 173).

22. Section 75 is concerned only with expenditure incurred in relation to the election of a particular candidate in a particular constituency. There is nothing to prohibit a political party or wealthy individual or organisation from spending money on publicity in support or opposition to a political party or tendency generally, at national or regional level, provided that there is no intention to promote or prejudice the electoral chances of any particular candidate in any particular constituency (see *R. v. Tronoh Mines* [1952] 1 All England Reports 697). Nor are there any restrictions on private donations to political parties or on the powers of the press to support or oppose the election of any particular candidate (see 1983 Act, section 75(1)(c)(i) – paragraph 19 above).

PROCEEDINGS BEFORE THE COMMISSION

23. The application to the Commission of 11 March 1994 (no. 24839/94) was brought jointly by Mrs Bowman and SPUC. Both applicants complained that the prosecution brought against Mrs Bowman violated their rights to freedom of expression under Article 10 of the Convention. They also invoked Article 13 of the Convention.

24. On 4 December 1995 the Commission declared the application admissible in so far as it concerned the complaint by Mrs Bowman under Article 10. However, finding that SPUC could not itself claim to be a victim by virtue of Mrs Bowman's prosecution, it declared the remainder of the application inadmissible.

In its report of 12 September 1996 (Article 31), the Commission expressed the opinion that there had been a violation of Article 10 of the Convention (twenty-eight votes to one). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

25. In their memorial and at the hearing before the Court, the Government submitted that, contrary to the opinion of the Commission, the application should be declared inadmissible under Article 25 of the Convention. In the alternative, they submitted that there had been no restriction on the applicant's freedom of expression within the meaning of Article 10 § 1 and that, even if there had been, it was necessary in a democratic society within the meaning of Article 10 § 2.

The applicant asked the Court to find a violation of Article 10 and to award her just satisfaction under Article 50.

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* 1998), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

26. The Government contended that Mrs Bowman could not properly claim to be a "victim" of a violation of the Convention within the meaning of Article 25 § 1 which provides, as relevant:

"The Commission may receive petitions ... from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in [the] Convention..."

They pointed to the fact that the trial judge had directed the jury on 28 September 1993 to acquit the applicant, and submitted that in these circumstances it was impossible to say that she would have been convicted had the trial continued or that the law was applied to her detriment.

27. The applicant submitted that, as a result of the application to her of section 75 of the 1983 Act, she had suffered the anxiety, stigma and expense involved in her interrogation by the police, the prosecution against her and the surrounding publicity.

28. The Commission in its decision on admissibility was satisfied that Mrs Bowman had been directly affected by the prosecution instituted against her, and could therefore claim to be the victim of an interference.

29. The Court observes that a measure of implementation, namely a prosecution, was brought against Mrs Bowman. Although she was eventually acquitted, this was for the technical reason that the summons had not been issued within the statutory time-limit (see paragraph 14 above). The fact that the prosecuting authorities decided to commence proceedings against the applicant was, at the very least, a strong indication to her that, unless she modified her behaviour during future elections, she would run the risk of being prosecuted again and possibly convicted and punished.

In these circumstances, the Court considers that Mrs Bowman could properly claim to have been directly affected by the law in question (see, among other authorities, the *Norris v. Ireland* judgment of 26 October 1988, Series A no. 142, p. 16, § 31) and, therefore, to be the victim of a violation of the Convention within the meaning of Article 25 § 1.

The Government's preliminary objection is accordingly dismissed.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. Mrs Bowman alleged a violation of her right to freedom of expression under Article 10 of the Convention, which states, as relevant:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The Commission agreed that there had been a violation, but the Government disputed this.

A. Existence of a restriction

31. The Government submitted that there had been no restriction of Mrs Bowman’s right to freedom of expression, since section 75 of the 1983 Act restricted only the freedom of unauthorised persons to incur expenditure with a view to promoting or procuring the election of a particular candidate in a parliamentary election, but not their freedom to express opinions or disseminate information more generally (see paragraph 19 above).

32. The Commission, like the applicant, observed that the fact that the prosecuting authorities obviously regarded her conduct as falling within the statutory prohibition caused, through the fear of prosecution, a restriction on her freedom of expression.

33. The Court notes that section 75 of the 1983 Act does not directly restrain freedom of expression, but instead limits to GBP 5 the amount of money which unauthorised persons are permitted to spend on publications and other means of communication during the election period. Moreover, it does not restrict expenditure on the transmission of information or opinions in general, but only that incurred during the relevant period “with a view to promoting or procuring the election of a candidate”.

Nonetheless, there can be no doubt that the prohibition contained in section 75 amounted to a restriction on freedom of expression, which directly affected Mrs Bowman (see paragraph 29 above).

34. It remains to be considered whether this restriction was “prescribed by law”, pursued a legitimate aim and was “necessary in a democratic society”.

B. “Prescribed by law”

35. The Court considers, and indeed this was not disputed before it, that the restriction on expenditure provided for by section 75 of the 1983 Act was “prescribed by law”.

C. Legitimate aim

36. The Government maintained that the spending limit in section 75 of the 1983 Act pursued the aim of protecting the rights of others in three ways. First, it promoted fairness between competing candidates for election by preventing wealthy third parties from campaigning for or against a particular candidate or issuing material which necessitated the devotion of part of a candidate’s election budget, which was limited by law (see paragraph 18 above), to a response. Secondly, the restriction on third-party expenditure helped to ensure that candidates remained independent of the influence of powerful interest groups. Thirdly, it prevented the political debate at election times from being distorted by having the discussion shifted away from matters of general concern to centre on single issues.

37. In the applicant’s view, section 75, far from pursuing a legitimate aim, only operated to curtail democratic freedom of expression. It was improbable in the extreme that single-issue groups, such as SPUC, could distract voters from the mainstream political platforms to such a degree as to hinder the electoral process. Furthermore, the restriction on expenditure could not properly be said to ensure equality between candidates, because they were already subject to inequalities depending on whether or not they received the support of one of the major political parties, which were free to spend unlimited amounts on campaigning at national level as long as they did not attempt to promote or prejudice any particular candidate (see paragraph 22 above).

38. The Court finds it clear that the purpose of section 75, particularly taken in the context of the other detailed provisions on election expenditure in the 1983 Act, is to contribute towards securing equality between candidates. It therefore concludes, as did the Commission, that the application of this law to Mrs Bowman pursued the legitimate aim of protecting the rights of others, namely the candidates for election and the electorate in Halifax and, to the extent that the prosecution was intended to have a deterrent effect, elsewhere in the United Kingdom.

It considers that the arguments advanced by the applicant on this point are of greater relevance to the issue whether the restriction was “necessary in a democratic society”, to which question it now turns.

D. “Necessary in a democratic society”

39. The Government maintained that section 75 of the 1983 Act imposed only a partial restriction on expenditure (see paragraph 31 above), which was no more extensive than was necessary to achieve the legitimate aims pursued. They pointed out that there had been other means of communication open to Mrs Bowman, for example, she could have started her own newspaper, had letters or articles published in the press, given interviews on radio or television, stood for election herself or published leaflets with the purpose of informing the electorate without promoting or opposing any particular candidate.

40. The applicant, as did the Commission, considered that the restriction was disproportionate. She contended that there was no pressing social need to suppress the dissemination of factually accurate information about the position of candidates for public office on important moral issues; on the contrary, there was a pressing need to permit such matters to be put on the political agenda prior to elections. Despite the Government’s submission that the restriction was necessary to ensure equality between candidates, there was no indication that Mrs Bowman’s leaflets had operated to disadvantage any particular candidate, since it was possible that the information they contained attracted as many supporters as opponents of the different policies on abortion. Furthermore, she asserted that the restriction was illogical since no limit was placed on the powers of the mass media to publish material in support of or opposition to candidates or on the political parties and their supporters to pay for advertising at national or regional levels as long as they did not attempt to promote or prejudice the electoral prospects of any particular candidate.

41. The Court observes, in the first place, that the limitation on expenditure prescribed by section 75 of the 1983 Act is only one of the many detailed checks and balances which make up United Kingdom electoral law. In such a context, it is necessary to consider the right to freedom of expression under Article 10 in the light of the right to free elections protected by Article 3 of Protocol No. 1 to the Convention, which provides:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

42. Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system (see the *Mathieu-Mohin and Clerfayt v. Belgium* judgment of 2 March 1987, Series A no. 113, p. 22, § 47, and the *Lingens v. Austria* judgment of 8 July 1986, Series A no. 103, p. 26, §§ 41–42). The two rights are inter-related and operate to reinforce each other: for example, as the Court has observed

in the past, freedom of expression is one of the “conditions” necessary to “ensure the free expression of the opinion of the people in the choice of the legislature” (see the above-mentioned Mathieu-Mohin and Clerfayt judgment, p. 24, § 54). For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely.

43. Nonetheless, in certain circumstances the two rights may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions, of a type which would not usually be acceptable, on freedom of expression, in order to secure the “free expression of the opinion of the people in the choice of the legislature”. The Court recognises that, in striking the balance between these two rights, the Contracting States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems (see the above-mentioned Mathieu-Mohin and Clerfayt judgment, pp. 23 and 24, §§ 52 and 54).

44. Turning to the facts of the present case, the Court’s task is to determine whether, in all the circumstances, the restriction on Mrs Bowman’s freedom of expression was proportionate to the legitimate aim pursued and whether the reasons adduced by the national authorities in justification of it were relevant and sufficient (see the above-mentioned Lingens judgment, p. 26, § 40).

45. In this connection it finds it significant that the limitation on expenditure contained in section 75 of the 1983 Act was set as low as GBP 5. It recalls that this restriction applied only during the four to six weeks preceding the general election (see paragraphs 16 and 18–19 above). However, although it is true that Mrs Bowman could have campaigned freely at any other time, this would not, in the Court’s view, have served her purpose in publishing the leaflets which was, at the very least, to inform the people of Halifax about the three candidates’ voting records and attitudes on abortion, during the critical period when their minds were focused on their choice of representative (see paragraph 11 above).

46. The Court notes the Government’s submission that the applicant could have made use of alternative methods to convey the information to the electorate. However, it is not satisfied that, in practice, she had access to any other effective channels of communication. For example, it has not been demonstrated that she had any way of ensuring that the material contained in the leaflets was published in a newspaper or broadcast on radio or television. Although she could herself have stood for election and thus become entitled to incur the statutory amount of expenses allowed to candidates, this would have required her to pay a deposit of GBP 500, which she would in all probability have forfeited (see paragraphs 17 and 18 above). Furthermore, it was not her desire to be elected to Parliament, but only to distribute leaflets to voters.

47. In summary, therefore, the Court finds that section 75 of the 1983 Act operated, for all practical purposes, as a total barrier to Mrs Bowman's publishing information with a view to influencing the voters of Halifax in favour of an anti-abortion candidate. It is not satisfied that it was necessary thus to limit her expenditure to GBP 5 in order to achieve the legitimate aim of securing equality between candidates, particularly in view of the fact that there were no restrictions placed upon the freedom of the press to support or oppose the election of any particular candidate or upon political parties and their supporters to advertise at national or regional level, provided that such advertisements were not intended to promote or prejudice the electoral prospects of any particular candidate in any particular constituency (see paragraph 22 above). It accordingly concludes that the restriction in question was disproportionate to the aim pursued.

It follows that there has been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

48. The applicant claimed just satisfaction 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. Non-pecuniary damage

49. Mrs Bowman sought compensation of GBP 15,000 for the stigma, stress and anxiety she had suffered as a result of being prosecuted.

50. The Government submitted that a finding of a violation would be an adequate remedy.

51. The Court considers that, in all the circumstances of the case, the finding of a violation is sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

B. Legal costs and expenses

1. Domestic proceedings

52. Mrs Bowman claimed repayment of the shortfall of her domestic legal costs which had not been covered by legal aid, in total GBP 1,633.64.

53. The Government submitted that no domestic legal costs should be awarded.

54. The Court is satisfied that the costs in question were necessarily incurred by the applicant in the domestic proceedings and were reasonable as to quantum (see the *Sunday Times* v. the United Kingdom (no. 1) judgment of 6 November 1980, Series A no. 38, p. 13, § 23). It therefore awards them in total, together with any value-added tax (VAT) which may be payable in respect of them.

2. Strasbourg proceedings

55. The applicant requested legal costs and expenses incurred in the Strasbourg proceedings amounting to GBP 35,490.

56. Counsel for the Government suggested at the hearing before the Court that this amount was excessive.

57. The Court, deciding on an equitable basis, awards GBP 25,000 in respect of the costs and expenses of the Strasbourg proceedings, together with any VAT which may be payable.

D. Default interest

58. 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

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Holds* by fourteen votes to six that there has been a violation of Article 10 of the Convention;
3. *Holds* unanimously that the finding of violation is sufficient just satisfaction for any non-pecuniary damage suffered by the applicant;

4. *Holds* unanimously
 - (a) that the respondent State is to pay the applicant, within three months, in respect of legal costs and expenses, 26,633.64 pounds sterling (twenty-six thousand six hundred and thirty-three pounds and sixty-four pence) together with any value-added tax which may be payable;
 - (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* unanimously 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 19 February 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 53 § 2 of Rules of Court A, the following opinions are annexed to this judgment:

- (a) joint concurring opinion of Mr Pettiti, Mr Lopes Rocha and Mr Casadevall;
- (b) partly dissenting opinion of Mr Valticos;
- (c) joint partly dissenting opinion of Mr Loizou, Mr Baka and Mr Jambrek;
- (d) partly dissenting opinion of Sir John Freeland, joined by Mr Levits.

Initialled: R. B.
Initialled: H. P.

JOINT CONCURRING OPINION OF JUDGES PETTITI,
LOPES ROCHA AND CASADEVALL

(Translation)

1. We voted with the majority and entirely agree with the Court's decision.

2. We are, however, unable to concur in its finding in paragraph 47 of the judgment that section 75 of the Representation of the People Act 1983 operated, for all practical purposes, as a total barrier to Mrs Bowman's publishing "information with a view to influencing the voters of Halifax in favour of an anti-abortion candidate".

It is implicit in that statement that the Court considered from its construction of the leaflet published by the applicant that she had contravened the statute prohibiting expenditure incurred "with a view to promoting or procuring the election of a candidate".

3. Section 75 does not prohibit the publication of facts or comment for the information of the general public.

4. In our opinion, the first four lines of paragraph 47 should have said no more than that the leaflet was "intended to inform the voters of Halifax of the probable intentions of the candidates with regard to the abortion issue".

PARTLY DISSENTING OPINION OF JUDGE VALTICOS

(Translation)

I cannot accept that the fact that the British electoral system restricts the expenditure “unauthorised” persons may incur in promoting or prejudicing the chances of a particular candidate in the period leading up to an election amounts to a breach of the Convention. While, admittedly, a theoretical weakness of that provision – which is intended to prevent powerful individuals or bodies undermining the fairness of elections or unduly influencing voters’ opinions – is that it precludes payment of even small amounts, the fact is that in the present case the amount concerned was very large since it was enough for one and a half million leaflets.

There is something slightly ridiculous in seeking to give the British Government lessons in how to hold elections and run a democracy; above all, it is wrong to seek the repeal of a provision aimed at precluding a person, other than a member of political parties, from influencing the way people vote and – as Mr Martínez rightly noted in his dissenting opinion annexed to the Commission’s report – at preventing candidates with substantial financial resources ultimately gaining an advantage over other less well-off candidates.

Accordingly, I am unable to concur in the judgment as regards the finding of a violation of Article 10 of the Convention.

JOINT PARTLY DISSENTING OPINION OF
JUDGES LOIZOU, BAKA AND JAMBREK

1. We agree with the rejection by the Court of the Government's preliminary objection that the applicant is not a victim of a violation of the Convention (see paragraph 29 of the judgment).

2. We do not, however, find it possible to agree with the conclusion reached by the majority that there has been a violation of the applicant's right to freedom of expression in that the restriction imposed upon her by section 75(1) and (5) of the Representation of the People Act 1983 ("the 1983 Act") was disproportionate to the aim pursued.

3. Under section 75(1) of the 1983 Act, any expenditure incurred to promote the election of a candidate by any person other than the candidate or his agent that exceeds the amount of five pounds sterling (GBP 5) is prohibited, if incurred in relation to the election of a particular candidate in a particular constituency. The 1983 Act does not prohibit a political party or an individual or organisation from spending money on publicity in support of or opposition to a political party or a movement generally, at a national or regional level, provided that there is no intention to promote or prejudice the electoral chances of any particular candidate in any particular constituency. Nor are there any restrictions on private donations to political parties or on the powers of the press to support or oppose the election of any particular candidate. The limitation imposed by section 75 relates only to the promotion of candidates not to the promotion of causes (see paragraphs 19-22 of the judgment).

4. As found by the Court, the aforementioned limitation on expenditure is only one of many detailed checks and balances which make up United Kingdom electoral law. In that context the Court examined the right to free elections protected by Article 3 of Protocol No. 1 to the Convention. The Court indicated that freedom of expression and free elections, particularly freedom of political debate, together form the bedrock of any democratic system and that the two rights are inter-related and operate to reinforce each other. It also recognised that, in striking the balance between these two rights the Contracting States have a margin of appreciation, as they do generally with regard to the organisation of their electoral systems. We fully subscribe to this analysis by the Court (see paragraphs 41-43 of the judgment).

5. There can be no doubt that limits on election campaign spending maintain equality of arms as between candidates, a most important principle in democratic societies and in the electoral process. Once the 1983 Act, by its section 76, imposes limits on the spending of candidates so that wealthy candidates will not have an unfair advantage, then there must be

limits on others, such as wealthy supporters or action groups, from spending money for the benefit of one candidate or in order to prevent the election of another, as adverse publicity against a candidate might go unanswered on account of the limit on the amount of money a candidate is allowed to spend (see paragraph 18 of the judgment).

6. The philosophy behind the limit imposed by section 75 is, *inter alia*, to safeguard candidates against manipulation by pressure groups. The limit in question is a narrow one and does not amount to a general impediment on the expression of views by single-issue groups as there are several alternative methods of expressing their views and convictions on any particular issue. They can distribute leaflets with the purpose of informing the electorate as long as they do not promote or oppose any particular candidate. This restriction, which falls within the State's margin of appreciation, has to be seen as part of an overall balanced democratic electoral system.

7. The Commission found (paragraph 39 of its report) that section 75 "may ... be considered as pursuing the legitimate aim of protecting the rights of others, namely, the candidates and the electors in a particular constituency". The Court found it clear that the purpose of section 75, particularly taken in the context of the other detailed provisions on election expenditure in the 1983 Act, is to contribute towards securing equality between candidates. It therefore concluded, as did the Commission, that the application of this law to Mrs Bowman pursued the legitimate aim of protecting the rights of others, namely the candidates for election and the electorate in Halifax and, to the extent that the prosecution was intended to have a deterrent effect, elsewhere in the United Kingdom (see paragraph 38 of the judgment). We are in agreement with this conclusion.

8. Our disagreement is limited to the finding of the Court in paragraph 47 that section 75 operated, for all practical purposes, as a total barrier to Mrs Bowman's publishing information with a view to influencing the voters in Halifax in favour of an anti-abortion candidate. We also disagree with its finding that it was not satisfied that it was necessary to limit the expenditure of the applicant to GBP 5 in order to achieve the legitimate aim of securing equality between candidates, particularly in view of the fact that there were no restrictions placed upon the freedom of the press to support or oppose the election of any particular candidate or upon political parties and their supporters to advertise at national or regional level, provided such advertisements were not intended to promote or prejudice the electoral prospects of any particular candidate in any particular constituency. Hence our disagreement with the conclusion of the Court that the restriction in question was disproportionate to the aim pursued and that this constituted a violation of Article 10 of the Convention.

9. In our view, section 75, examined in the context of all the provisions of the Act, cannot be considered as a total barrier to Mrs Bowman's publishing information on the issues she wished to raise. As indicated above, there exist several other ways of expressing one's convictions and bringing them to the attention of the electorate without promoting or opposing any particular candidate in a particular constituency. The restriction, which has to be viewed in the light of the totality of the electoral system which is based on constituency representation, was a partial one and moreover limited in time to the four to six week pre-election period.

10. The States Parties to the Convention have a margin of appreciation in assessing the necessity of an interference and the task of the Court is confined to looking at the interference complained of in the light of the case as a whole and determining whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see the *Sunday Times v. the United Kingdom* (no. 2) judgment of 26 November 1991, Series A no. 217, p. 29, § 50; the *Vogt v. Germany* judgment of 26 September 1995, Series A no. 323, p. 26, § 52; and the *Goodwin v. the United Kingdom* judgment of 27 March 1996, *Reports of Judgments and Decisions* 1996-II, pp. 500–01, § 40).

11. For all the above reasons, we have come to the conclusion that there has been no violation of Article 10 of the Convention. The restriction imposed by section 75 of the Act is proportionate to, and no more extensive than necessary in a democratic society to achieve, the legitimate aim that has been identified by the Court, and it falls within the margin of appreciation of the United Kingdom.

12. In particular, we have reached this conclusion because the restriction in question is part of an overall democratic electoral system with checks and balances that aim at preventing evasion of the maximum limits of expenditure. It offers equality of arms as between candidates; it protects candidates from manipulation by pressure groups – hence the preference of such groups for action in constituencies with marginal results – and safeguards their independence; it does not prohibit the spending of money for the promotion of a cause if done without the intention of promoting the interests, or harming the prospects, of a particular candidate; it counterbalances the limit imposed on candidates; it is limited in terms of time. To our minds the aforesaid reasons adduced by the respondent Government to justify the restriction in question are "relevant and sufficient".

PARTLY DISSENTING OPINION OF
JUDGE Sir John FREELAND, JOINED BY JUDGE LEVITS

1. I am unable to agree with the conclusion of the majority that there has been in this case an interference with Mrs Bowman's right to freedom of expression going beyond what is "necessary in a democratic society".

2. One of the essential foundations of a democratic society is a system which will ensure that parliamentary elections are freely and fairly conducted. Article 3 of Protocol No. 1 to the Convention indeed requires that the free elections which the High Contracting Parties undertake to hold shall take place "under conditions which will ensure the free expression of the people in the choice of the legislature". In its judgment of 2 March 1987 in the case of *Mathieu-Mohin and Clerfayt v. Belgium* (Series A no. 113, p. 22, § 47) the Court recognised that, since that Article "enshrines a characteristic principle of democracy", it is "of prime importance in the Convention system".

3. In the same judgment, the Court went on to recognise (at p. 24, § 54) that "the Contracting States have a wide margin of appreciation" in relation to the choice of electoral systems, adding that such systems "seek to fulfil objectives which are scarcely compatible with each other: on the one hand, to reflect fairly faithfully the opinions of the people, and on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will". That the electoral systems of the Contracting States in fact vary greatly is unsurprising, given the extent to which they have been shaped by national histories and characteristics.

4. The United Kingdom has a long parliamentary tradition and an electoral system which has evolved, with changing circumstances, over many years (and which, on one aspect or another, remains a perennial topic of public debate). The Representation of the People Act 1983, as amended, currently sets out a detailed and carefully articulated set of rules for the conduct of elections, reflecting the considered view of the legislature on a subject obviously of crucial importance to it – that is, the need to ensure the free and fair expression of the opinion of the people.

5. Part of this statutory scheme is section 75 of the 1983 Act, under which Mrs Bowman was (unsuccessfully) prosecuted in 1993. That section, taken together with section 76, is intended to promote fairness as between the candidates for election in a particular constituency by limiting the

expenditure which may be incurred for the purpose of improving the electoral prospects of one candidate or prejudicing those of another. The restrictions imposed by section 76 on the election expenditure of a candidate could be rendered ineffective if there were no corresponding limitation, as in section 75, on expenditure by others for that purpose.

6. An essential feature of the section 75 limitation is that no expenses over the prescribed amount are to be incurred “*with a view to promoting or procuring the election of a candidate*” (emphasis added: as paragraph 19 of the present judgment indicates, the words italicised were interpreted by the House of Lords in the Luft case to include the intention to prevent the election of a particular candidate or candidates). The section does not prevent expenditure on the provision of factual material or comment intended merely to inform the public. For a prosecution under the section to succeed, a jury would have to be satisfied beyond reasonable doubt that the defendant’s desire to advance the electoral prospects of one candidate or to prejudice those of another was one of the reasons which played a part in inducing him or her to incur the expense (see the speech of Lord Diplock in Luft, at p. 983, letters C to D).

7. It was submitted on behalf of Mrs Bowman that in incurring expenditure on the distribution of her leaflets she wished only to communicate factually accurate information, and that she was not interested in promoting the election of any particular candidate but only wanted to promote her own convictions. Whether or not she would have succeeded with a defence on these lines cannot now be known, given the outcome of the prosecution in 1993 (see paragraph 14 of the judgment). What is clear, however, is that section 75 would not prevent her and her organisation from informing members of the electorate of their views on abortion and embryo experimentation or from encouraging them to question candidates on those subjects, as long as no more than the permitted amount was spent for the purpose of improving or prejudicing the electoral prospects of a particular candidate.

8. The Court finds, in paragraph 38 of the judgment, that the purpose of section 75 of the 1983 Act, particularly taken in the context of the other detailed provisions on election expenditure, is clearly to contribute towards securing equality between candidates. It therefore concludes “that the application of this law to Mrs Bowman pursued the legitimate aim of protecting the rights of others, namely the candidates for election and the electorate in Halifax and, to the extent that the prosecution was intended to have a deterrent effect, elsewhere in the United Kingdom”.

9. The judgment thus appears to accept the desirability of promoting fairness between competing candidates for election by, *inter alia*, preventing third parties from campaigning without financial limit for or against a particular candidate or spending unlimited sums of money on the distribution of material which might call for expenditure in reply from a

candidate's compulsorily restricted election budget. It goes on, however, to attach significance to the fact that the limitation on expenditure contained in section 75 was set (by section 14(3) of the Representation of the People Act 1983) as low as GBP 5: see paragraph 45. It then finds, in paragraph 47, that section 75 "operated, for all practical purposes, as a total barrier to Mrs Bowman's publishing information with a view to influencing the voters of Halifax in favour of an anti-abortion candidate"; and it expresses the Court as not being satisfied "that it was necessary thus to limit her expenditure to GBP 5 in order to achieve the legitimate aim of securing equality between candidates...".

10. Yet the achievement of the legitimate aim of securing equality between candidates surely militates more in favour of retaining (or even reducing) the very low limit on expenditure by third parties than in favour of increasing (or even removing) it, as long as the election expenditure of candidates themselves is limited to anything like as low a level as it is at present. And it has not been suggested that there is any requirement on the United Kingdom, under the Convention or otherwise, to raise the limits which Parliament has seen fit to impose on candidates' election expenditure.

11. Paragraph 47 of the judgment also contrasts the limitation set by section 75 with the absence of restrictions upon the freedom of political parties and their supporters to incur expenditure on advertisements at national or regional level, provided that it is not a purpose of the expenditure to improve or damage the electoral prospects of a particular candidate in a particular constituency, or upon the press to support or oppose particular candidates. It is, however, not difficult to understand why fairness at constituency level should be treated as of special importance for the integrity of the electoral process; and the Court has, of course, had occasion in the past to stress the particular importance of the role of the press in a democratic society (see, for example, the *Lingens v. Austria* judgment of 8 July 1986, Series A no. 103, p. 26, § 41).

12. Confined as it is to expenditure by third parties for the purpose of promoting or harming the electoral prospects of a particular candidate, the interference with the right to freedom of expression which the application of section 75 represents is narrow in scope. It falls, in my view, within the margin of appreciation which is left to a Contracting State in deciding what is necessary, in the light of its own historical experience and current circumstances, for the proper regulation of a process so central to democracy as the conduct of parliamentary elections (and I would add that I consider there to be a clear need for a particularly cautious approach to be adopted in adjudicating internationally on rules prescribed by long-established democratic parliaments on matters so intimately involved with their own composition and operation).

13. I would also add that the role played by single-issue pressure groups in influencing and mobilising public opinion in modern democracies is, as the Government acknowledged, an important one. But a factor of which the State may legitimately take account in determining the regulation of the electoral process is the extent to which limits on the funding of single-issue campaigns at a parliamentary election may be needed in order to counter the risk of excessive diversion of the main electoral debate and to “channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will” (see the second objective identified by the Court in the passage from the judgment in the Mathieu-Mohin and Clerfayt case which is quoted in paragraph 3 above).

14. Lastly, on the question of proportionality, it is to be noted that the existence of section 75 did not prevent the circulation of 1.5 million of Mrs Bowman’s leaflets throughout the United Kingdom at the 1992 general election, including 25,000 in the Halifax constituency, and that the subsequent prosecution against her failed, even if on the technical ground of non-observance of a time-limit. Having regard to these facts in addition, the extent of the interference with her right to freedom of expression should not be exaggerated.

15. Although in other respects I agree with the conclusions of the majority, for the above reasons I do not find that there has been a violation of Article 10 of the Convention in this case.