



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

THIRD SECTION

CASE OF FAULKNER v. the UNITED KINGDOM

(Application no. 30308/96)

JUDGMENT

STRASBOURG

30 November 1999

In the case of Faulkner v. the United Kingdom,

The European Court of Human Rights (Third Section), sitting as a chamber composed of:

Mr J.-P. COSTA, *President*,

Mr P. KŪRIS,

Mrs F. TULKENS,

Mr W. FUHRMANN,

Mrs H.S. GREVE,

Mr K. TRAJA,

Mr M. UGREKHELIDZE, *Judges*,

and also Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 November 1999,

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

PROCEDURE

1. The case was referred to the Court as established under former Article 19 of the Convention³ by the European Commission of Human Rights (“the Commission”), on 23 March 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 30308/96) against the United Kingdom lodged with the Commission under former Article 25 by a British national, Mr Ian Faulkner (“the applicant”), on 6 February 1995. The Commission’s request referred to former Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (former 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 Articles 6 and 13 of the Convention.

2. The applicant designated Mr P. Leach, a solicitor practising in London, as the lawyer who would represent him (Rule 36 of the Rules of Court).

3. In accordance with Article 5 § 4 of Protocol No. 11, taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, a panel of the Grand Chamber of the Court decided that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently, the President of the Court, acting under Rule 52 § 1 of the Rules of Court, assigned the case to the Third Section.

The Chamber constituted within the Section included *ex officio* Sir Nicolas Bratza, the judge elected in respect of the United Kingdom (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Mr. J.-P. Costa,

3. As applicable before the entry into force of Protocol No. 11 and the establishment of a Court functioning on a permanent basis (Article 19 of the Convention as amended by Protocol No. 11).

the Vice-President of the Section (Rules 13 and 26 § 1(a)). The other members designated by the latter to complete the Chamber were Mr P. Kūris, Mrs F. Tulkens, Mr W. Fuhrmann, Mrs H.S. Greve and Mr K. Traja (Rule 26 § 1 (b)).

Subsequently Sir Nicolas Bratza, national judge, who had taken part in the Commission's examination of the case, withdrew from sitting in the Chamber (Rule 28). The Government accordingly appointed Sir David Latham to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

4. The President of the Chamber, acting through the Section Registrar, contacted Mrs S. Langrish, the Agent of the Government of the United Kingdom ("the Government") and the applicant's lawyer and fixed the written procedure.

5. Following the agreement subsequently reached by the parties, the Government waived the presence of the national judge for the Court's final examination of the case. Sir David Latham was accordingly replaced by Mr M. Ugrekhelidze.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant arrived in Guernsey in January 1989 and established two local companies, Callan and Sage Management Ltd and Callan Participating Mortgage Fund Ltd. He became the managing director of the first company.

7. On 22 June 1989 the Royal Court in Guernsey issued an arrest warrant against the applicant for an offence under section 18 (1) (b) of the Theft (Bailiwick of Guernsey) Law 1983. On 23 June 1989 at 20:29 the applicant was arrested by the Surrey Constabulary in Surrey, England. According to a statement made by the police officer who carried out the arrest, which is contested by the applicant, the applicant was informed that he was suspected of deception. The Surrey police also seized the applicant's car. On 24 June 1989 the applicant's arrest warrant was backed for execution by a judge in Surrey.

8. On 25 June 1989 the applicant was escorted by the above-mentioned police officer to Guernsey. He arrived at the local police station at 17:55. He was examined and at 20:50 he was charged with an offence under section 18 (1) (b) of the Theft Law.

9. On the morning of 26 June 1989 the applicant appeared before a magistrate in Guernsey. He was represented by a lawyer whom the applicant met in court that day and who offered his services on a voluntary basis. The magistrate ordered the applicant's release on bail, on condition that he report

to the police every day, that he post a surety of £ 1,000 and that he surrender his passport. At about 15:30 on the same day, a friend of the applicant deposited the amount fixed for bail at a police station in England. At 17:21 the English authorities officially informed the Guernsey authorities that the money would be transferred to them. However, H.M. Greffier decided that the money could not be accepted until he had been assured that the applicant's friend had been advised of the consequences of posting the surety.

10. On 27 June 1989 at about 11:55 the applicant's friend was advised by the Guernsey authorities that a faster means of lodging the surety would be to transfer the money to a bank in Guernsey in the applicant's name. The friend did that and the applicant was taken on foot, handcuffed, from the prison to a bank in St. Peter's Port where he collected the money. Then he was taken again on foot, handcuffed, to the Crown Office - the Greffe - where he deposited the bail. He was released at 14:35 on 27 June 1989.

11. On 28 June 1989 the applicant was granted parochial assistance. From then on the applicant claims to have lived on various welfare benefits, educational grants and some low paid temporary jobs.

12. After his release from detention, the applicant applied to H.M. Procureur for legal aid in connection with the criminal proceedings and seven civil law actions recently brought against him. He was not referred to an advocate under the voluntary legal aid scheme. However, according to the Government, the applicant was referred to Ms. F who agreed to represent him on a private client basis. The applicant does not accept that Ms. F agreed to represent him on a private client basis. He also claims that he was not informed that, in the event of acquittal, his legal costs would not be recoverable.

13. On dates which have not been specified, the applicant was charged with three additional offences under section 18 (1) (b) of the Theft Law and an offence under section 38 (2) (b) of the Protection of Investors (Bailiwick of Guernsey) Law 1987.

14. On 22 April 1991 the applicant was tried by a Magistrate in Guernsey on the four charges under the Theft Law. On 26 April 1991 he was acquitted and was remanded on conditional bail on the charge under the Protection of Investors Law. The bail conditions were that he post a surety of £500 and that he report to the police on a monthly basis.

15. According to local custom, after the applicant had been acquitted, his representative decided on the fee that he should be charged. On 30 July 1991 Advocate F wrote to the applicant asking him to pay her fees.

16. On 4 November 1991 H.M. Comptroller wrote to the applicant's counsel that no further action would be taken against the applicant regarding the outstanding charge under the Protection of Investors Law.

17. On an unspecified date, the applicant applied for legal aid with a view to instituting proceedings for unlawful imprisonment against the Surrey Constabulary. His application was refused on the ground that, on the information available, he had no reasonable prospects of establishing

liability in the proceedings. The applicant appealed on 10 January 1992. On a date which has not been specified, his appeal was refused.

18. On 3 April 1992 the outstanding charge against the applicant was formally dismissed by the Magistrates' Court in Guernsey.

19. On 18 September 1992 Ms. F agreed with the applicant that her fee would be paid in monthly instalments.

20. On 15 February 1993 the applicant was informed by his lawyer that there was no procedure by which he could recover costs incurred in criminal proceedings in Guernsey.

21. On 12 October 1994 the applicant sent a letter to Ms. F in which he recorded, *inter alia*, her refusal to represent him in the future because of his failure to settle her fee note. On the same date he wrote to H.M. Comptroller to complain that no lawyer in Guernsey would be prepared to represent him because of the fees he still owed to Advocate F, the lawyer who represented him in the criminal proceedings.

22. On 19 October 1994 H.M. Comptroller advised the applicant that he could not make any constructive comment because the applicant had not indicated the civil matter he wished to pursue, the likely cost of pursuing it and his means and earnings. Moreover, the applicant had not indicated whether he had approached Advocate F, with a view to Ms. F's providing the applicant with a letter to the effect that she was content if the applicant should approach another Advocate, and that the Advocate should represent the applicant, notwithstanding that the applicant had not settled her fee note.

23. On 28 December 1994 the applicant received the following advice from H.M. Procureur regarding legal aid in criminal proceedings in Guernsey: "In the case of (criminal) proceedings in the Magistrates' Court a person who has very limited assets and income may apply to the Greffe for an Advocate to be allocated on the voluntary Legal Aid Rota Scheme. The Scheme is not a free legal aid scheme. It is run for the benefit of accused persons with very limited assets and means. An Advocate is entitled to make a charge if it appears after conducting a more exhaustive investigation of means and income that an applicant can afford to make payment." Insofar as the applicant considered that the Crown should pay his fee bill, the Procureur made it clear that "neither the Crown nor the States provide funding in such a case. "

24. On 8 February 1995 the applicant held a discussion with H.M. Greffier concerning legal aid. On 9 February 1995 the Greffier wrote to the applicant that, although he did not know the precise nature of the matters the applicant wished to pursue, as the applicant did not wish to divulge them fully to him, he could, nevertheless, inform the applicant that no legal aid was available for the institution of civil proceedings in Guernsey.

PROCEEDINGS BEFORE THE COMMISSION

25. Mr Faulkner applied to the Commission on 6 February 1995. He complained, *inter alia*, that he could not institute civil proceedings in Guernsey because there was no legal aid available for these purposes. He invoked Articles 6 and 13 of the Convention.

26. The Commission declared the application 30308/96 partly inadmissible on 26 February 1997 and adjourned its examination of certain complaints under Articles 3, 5, 6 and 13 of the Convention. By decision of 21 May 1998, the Commission decided to strike the application out of its list of cases in so far as it concerned some complaints that the applicant had withdrawn and to declare admissible the applicant's complaints that he could not institute civil proceedings against the Guernsey authorities for false imprisonment, assault and battery and that he did not have a remedy in this connection. In its report of 1 December 1998 (former Article 31), it expressed the opinion that there had been a violation of Article 6 § 1 of the Convention (by 24 votes to 2) and that no separate issue arose under Article 13 of the Convention (unanimously)¹.

AS TO THE LAW

27. On 20 September 1999 the Court was informed by the Government that a friendly settlement had been reached with the applicant on the following terms:

“1. The Government undertakes that a Policy Letter to establish a civil legal aid system in Guernsey, consistent with the Commission's findings in this case, will be introduced by the Advisory and Finance Committee of the States of Guernsey into the States. The Advisory and Finance Committee has confirmed that it intends to submit such a Policy Letter to the States to authorise the drafting of the necessary legislation and thereafter the introduction of a civil legal aid scheme which will enable Guernsey to comply with the provisions of the European Convention on Human Rights.

To this end the Advisory and Finance Committee has already sought legal advice from the Law Officers of the Crown in Guernsey and has invited the Guernsey Bar Council to make submissions to the Committee as to the form which this scheme should take. The reply of the Bar Council is awaited. Detailed discussions will then take place to establish the principles of a scheme which the Committee can recommend to the States of Guernsey. The Committee intends that the approach to the States of Deliberation will be made in 2000 and that the scheme will come into force in the same year.

2. The Government will pay to Mr Faulkner compensation of £6,000 within one month of settlement of the case.

1. *Note by the Registry*. A copy of the Commission's report is obtainable from the Registry.

3. The Government will pay Mr Faulkner's reasonable legal costs (of £14,235.77) incurred in bringing his application to the European Commission and Court of Human Rights within one month of the settlement of the case."

28. On 17 September 1999 the applicant's representative informed the Court that the applicant agreed to the above terms of the settlement.

29. The Court takes formal note of the agreement reached by the Government and Mr Faulkner. It would nevertheless be open to the Court, having regard to its responsibilities under Article 37 § 1 *in fine* of the Convention, to decide to continue its examination of the case if it were not satisfied that the settlement in question was based on respect for human rights as recognised in the Convention or its Protocols (Rule 62 § 3). However, that is not so in this case.

30. In this connection, the Court points out that in several previous cases it has had to opportunity to examine the issue of whether the costs and expenses related to the institution of proceedings can effectively bar access to the court for certain litigants contrary to Article 6 of the Convention (see the *Airey v. Ireland* judgment of 9 October 1979, Series A no. 32; the *Tolstoy Miloslavsky v. the United Kingdom* judgment of 13 July 1995, Series A no. 316-B and the *Aït-Mouhoub v. France* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3214). In doing so, the Court specified the nature and extent of the Contracting States' obligations under the Convention in that regard.

31. Accordingly, the case should be struck out of the list.

FOR THESE REASONS THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and notified in writing on 30 November 1999, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Signed: J.-P. COSTA
President

Signed: S. DOLLÉ
Registrar