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

**CASE OF CABALLERO v. THE UNITED KINGDOM**

(*Application no. 32819/96*)

JUDGMENT

STRASBOURG

8 February 2000

**In the case of Caballero v. the United Kingdom,**

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr A. PASTOR RIDRUEJO,
Mr G. BONELLO,
Mr J. MAKARCZYK,
Mr P. KŪRIS,
Mr J.-P. COSTA,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mrs S. BOTOUCHAROVA,
Sir Robert CARNWATH, ad hoc *judge*,

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

Having deliberated in private on 30 September 1999 and 10 January 2000,

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 24 November 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 32819/96) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under former Article 25 by a Jamaican citizen, Mr Clive Caballero, on 28 June 1996. The applicant was represented by Mr P. Leach and, subsequently, by Ms M. Cunneen, both lawyers with Liberty, a civil liberties non-governmental organisation based in London. The Government of the United

1-2. *Note by the Registry.* Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

Kingdom ("the Government") were represented by their Agent, Mr H. Llewellyn, of the Foreign and Commonwealth Office.

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 Article 5 §§ 3 and 5 of the Convention taken both alone and in conjunction with Article 13 and under Article 14 of the Convention taken in conjunction with Article 5 § 3.

2. Having been designated before the Commission by the initials C.C., the applicant subsequently agreed to the disclosure of his name by the Court.

3. In accordance with the provisions of 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 decided on 14 January 1999 that the case would be examined by the Grand Chamber of the Court. The Grand Chamber included *ex officio* Sir Nicolas Bratza, the judge elected in respect of the United Kingdom (Article 27 § 2 of the Convention and Rule 24 § 4), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr A. Pastor Ridruejo, Mr J. Makarczyk, Mr P. Kūris, Mr R. Türmen, Mrs F. Tulkens, Mrs V. Strážnická, Mr V. Butkevych, Mr J. Casadevall, Mrs H.S. Greve, Mr A.B. Baka, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3).

Subsequently Sir Nicolas Bratza, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Sir Robert Carnwath to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1). Later Mr G. Bonello, substitute judge, replaced Mr Türmen, who was unable to take part in the further consideration of the case (Rule 24 § 5 (b)).

4. After consulting the Agent of the Government and the applicant's representative, the Grand Chamber decided to dispense with a hearing in the case, being of the opinion that the discharging of its functions under Article 38 § 1 (a) of the Convention did not require one to be held (Rule 59 § 2).

5. On 17 May, 3 June, 19 August and 10 September 1999 the applicant and the Government variously produced a number of documents, either at the President's request or of their own accord.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. In 1987 the applicant, who was born in 1926, was convicted of manslaughter by the Central Criminal Court, London. His record sheet read "manslaughter – heavy drinking session with female. In bed, during which he sexually interferes with her. Struggle ensues during which she dies". The naked body of the victim, a neighbour of the applicant, was discovered outside the door of her flat wrapped in a bedspread. The applicant was sentenced to four years' imprisonment. He was released in August 1988.

7. On 2 January 1996 the applicant was arrested by the police on suspicion of attempted rape of his next-door neighbour. He maintained that he had had sexual intercourse with the woman with her consent and the woman claimed that the incident had taken place after she had blacked out from drinking. He was brought before the Magistrates' Court on 4 January 1996. While the applicant instructed his solicitor to apply for bail on his behalf, no bail application was or could have been made in view of section 25 of the Criminal Justice and Public Order Act 1994. The record of the hearing of 4 January 1996 refers to section 25 of the 1994 Act as the reason for the refusal of bail. The applicant was remanded in custody by the Magistrate on 4 and 11 January 1996, the second appearance being necessary in view of the possibility (later abandoned) of the prosecution amending the charge against the applicant.

8. The applicant was convicted of attempted rape and of assault occasioning actual bodily harm in October 1996. On 17 January 1997 he was sentenced to four years' imprisonment for the assault conviction and to life imprisonment for the attempted rape conviction. The trial court deducted the period of his pre-trial detention from the sentence imposed pursuant to section 67 of the Criminal Justice Act 1967. On 11 July 1997 the Court of Appeal rejected his appeal against sentence.

## II. RELEVANT DOMESTIC LAW

9. Section 4 of the Bail Act 1976 as amended ("the 1976 Act") provided that a person accused of a criminal offence should be granted bail except as stated in Schedule 1 to the Act. Paragraph 2 of Schedule 1 provided that a defendant need not be granted bail if the court was satisfied that there were substantial grounds for believing that the defendant, if released on bail, would fail to surrender to custody, commit an offence while on bail or

interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

10. Under paragraph 9 of Schedule 1 to the 1976 Act, in taking the above decision, the court was to have regard to such of the following considerations, as well as to any other considerations, as appeared to that court to be relevant:

– the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it);

– the character, antecedents, associations and community ties of the defendant;

– the defendant's record as regards the fulfilment of his obligations under previous grants of bail in criminal proceedings; and

– except in the case of a defendant whose case was adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having defaulted.

11. According to paragraph 9A of Schedule 1 to the 1976 Act, if a defendant (who had been charged with murder, manslaughter, rape, attempted murder or attempted rape) was granted bail and representations had been made as regards the matters mentioned in paragraph 2 of Schedule 1, the court had to state its reasons for granting bail and cause those reasons to be included in the record of the proceedings.

12. Section 25 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") came into force on 10 April 1995 and provided as follows:

> "(1) A person who in any proceedings has been charged with or convicted of an offence to which this section applies and in circumstances to which it applies shall not be granted bail in those proceedings.
>
> (2) This section applies, subject to subsection (3) below, to the following offences, ... –
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> (a) murder;
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> (b) attempted murder;
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> (c) manslaughter;
>
> (d) rape; or
>
> (e) attempted rape.
>
> (3) This section applies to a person charged with or convicted of any such offence only if he has been previously convicted by or before a court in any part of the United Kingdom of any such offence or of culpable homicide and, in the case of a previous conviction of manslaughter or culpable homicide, if he was then sentenced to imprisonment or, if he was then a child or young person, to long-term detention under any of the relevant enactments.
>
> …"

13. Section 25 of the 1994 Act has been amended by section 56 of the Crime and Disorder Act 1998, which entered into force on 30 September 1998. Section 56 of the 1998 Act reads as follows:

> "In subsection (1) of section 25 of the 1994 Act (no bail for defendants charged with or convicted of homicide or rape after previous conviction of such offences), for the words 'shall not be granted bail in those proceedings' there shall be substituted the words 'shall be granted bail in those proceedings only if the court or, as the case may be, the constable considering the grant of bail is satisfied that there are exceptional circumstances which justify it'."

## PROCEEDINGS BEFORE THE COMMISSION

14. Mr Caballero applied to the Commission on 28 June 1996. He alleged that the automatic denial of bail prior to his trial constituted a violation of Article 5 §§ 3 and 5 of the Convention both taken alone and in conjunction with Article 13. He also claimed that there had been a violation of Article 14 of the Convention taken in conjunction with Article 5 § 3.

15. The Commission declared the application (no. 32819/96) admissible on 1 December 1997. In its report of 30 June 1998 (former Article 31 of the Convention), it expressed the opinion, by nineteen votes to twelve, that there had been a violation of Article 5 §§ 3 and 5 and that it was not necessary also to consider the complaint under Article 14 taken in conjunction with Article 5 § 3. It also expressed the unanimous opinion that there had been no violation of Article 13. The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment[1].

## FINAL SUBMISSIONS TO THE COURT

16. The Government in their memorial conceded that there had been a violation of Article 5 §§ 3 and 5 of the Convention. The Government also submitted that, for the reasons set out in the Commission's report, they considered that there had been no violation of Article 13 of the Convention and that no separate issue arose under Article 14.

17. The applicant maintained his complaints under Article 5 §§ 3 and 5 of the Convention and under Article 14 taken in conjunction with Article 5 § 3. He did not pursue his complaint under Article 13 before the Court.

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1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 5 §§ 3 AND 5 OF THE CONVENTION

18. The applicant claimed that the automatic denial of bail pending his trial pursuant to section 25 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act") constituted a violation of Article 5 § 3 of the Convention. He also complained that he did not have an enforceable right to compensation in this respect within the meaning of Article 5 § 5 of the Convention.

19. The relevant parts of Article 5 of the Convention read as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

20. The majority of the Commission was of the opinion that there had been a violation of Article 5 §§ 3 and 5 of the Convention. In their memorial to the Court, the Government conceded that there had been a violation of those provisions.

21. The Court accepts the Government's concession that there has been a violation of Article 5 §§ 3 and 5 of the Convention in the present case, with the consequence that it is empowered to make an award of just satisfaction to the applicant under Article 41, but it does not consider it necessary in the particular circumstances to examine the issues of interpretation of Article 5 §§ 3 and 5 raised by the applicant's complaint.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

22. The applicant contended before the Commission that he did not have an effective domestic remedy in relation to the breaches of Article 5 §§ 3 and 5 of the Convention. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

23. The Commission was of the opinion that there had been no violation of Article 13 of the Convention. The Government supported this conclusion before the Court, relying on the reasons set out in the Commission's report.

24. The applicant did not pursue this complaint at all before the Court, which sees no cause to examine it of its own motion.

## III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

25. The applicant further submitted that section 25 of the 1994 Act constituted a discriminatory difference in treatment contrary to Article 14 of the Convention when taken in conjunction with Article 5 § 3. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

26. The Commission found no necessity in the circumstances to examine this complaint. Before the Court, the Government agreed with this conclusion, again relying on the reasons outlined by the Commission in its report.

27. The Court notes that section 25 of the 1994 Act operated by selecting certain accused persons to whom bail could not be granted prior to trial. In view of its acceptance of the Government's concession in connection with Article 5 § 3 of the Convention (see paragraph 21 above), the Court does not find it necessary also to consider the applicant's complaint about section 25 of the 1994 Act under Article 14.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

29. The applicant did not allege any pecuniary damage. However, he sought an unspecified amount of compensation for non-pecuniary damage, arguing that a decision not to make such an award would strip Article 5 § 5 of any effectiveness. He also submitted an affidavit of a solicitor in the United Kingdom who has practised since 1985 exclusively in criminal law and advocacy in the criminal courts. The affidavit details why, according to

the deponent, the applicant would have had a good chance of being granted bail prior to his trial had section 25 of the 1994 Act not been in force. The Government did not comment on this claim.

30. The Court recalls that in certain cases which concerned violations of Article 5 §§ 3 and 4 it has made relatively small awards in respect of non-pecuniary damage (see the Van Droogenbroeck v. Belgium judgment of 25 April 1983 (*Article 50*), Series A no. 63, p. 7, § 13, and the De Jong, Baljet and Van den Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77, p. 29, § 65). However, in more recent cases, it has declined to make any such award (see the Pauwels v. Belgium judgment of 26 May 1988, Series A no. 135, p. 20, § 46; the Brogan and Others v. the United Kingdom judgment of 30 May 1989 (*Article 50*), Series A no. 152-B, pp. 44-45, § 9; the Huber v. Switzerland judgment of 23 October 1990, Series A no. 188, p. 19, § 46; the Toth v. Austria judgment of 12 December 1991, Series A no. 224, p. 24, § 91; the Kampanis v. Greece judgment of 13 July 1995, Series A no. 318-B, p. 49, § 66; *Hood v. the United Kingdom* [GC], no. 27267/95, §§ 84-87; ECHR 1999-I; and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 76, ECHR 1999-II). In some of these judgments the Court stated that just satisfaction can be awarded only in respect of damage resulting from a deprivation of liberty that the applicant would not have suffered if he or she had had the benefit of the guarantees of Article 5 § 3 and concluded, according to the circumstances, that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage suffered.

31. In the present case affidavit evidence, which is not disputed by the Government, was submitted by the applicant to the effect that, had it not been for section 25 of the 1994 Act, he would have had a good chance of being released on bail prior to his trial. The applicant further argued that any such release on bail prior to his trial could have been his last days of liberty given his advanced age, his ill-health and the long sentence he was serving, a submission on which the Government also did not comment. The Court awards the applicant, on an equitable basis, 1,000 pounds sterling (GBP) compensation for non-pecuniary damage.

### B. Costs and expenses

32. The applicant claimed a total of GBP 32,225.09 in legal costs and expenses (this is inclusive of value-added tax (VAT), as are all figures noted below). This claim comprised the costs and expenses of two different legal representatives. Dundons (a firm of solicitors) liaised between the applicant and Liberty, and the latter represented the applicant before the Court. The applicant sought reimbursement of costs and expenses in the amount of GBP 5,910.56 as regards Dundons' work on the case and in the sum of GBP 11,935.47 in respect of Liberty's work. His claim also included counsel's fees in the amount of GBP 14,379.06. In addition, all costs and expenses claimed embraced those which the applicant anticipated would be

incurred by his legal advisers after the submission of his memorial to the Court and up to the conclusion of the present procedure. However, by letter dated 3 September 1999, the applicant clarified that, as the anticipated costs and expenses related to any future hearing before this Court, that element could be discounted since no such hearing had taken place.

The Government argued that they should not be required to pay costs and expenses of two representatives and that, accordingly, the claim in respect of Dundons should be discounted. They also considered excessive the time for which counsel had billed. They further submitted that most of the anticipated costs and expenses requested should be discounted since, *inter alia*, the Government had conceded the violation of Article 5 of the Convention in their memorial and because no hearing had been held. The Government, accordingly, suggested a total award of GBP 12,000 in respect of costs and expenses.

33. The Court recalls that in order for costs and expenses to be recoverable under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and reasonable as to quantum (see, among other authorities, *Nikolova* cited above, § 79).

The Court finds that there was considerable duplication between the work carried out by the applicant's two representatives and would reduce the amount claimed in respect of Dundons accordingly. In addition, the number of hours for which counsel charged appears to be excessively high. Furthermore, given that little input was required of the applicant's representatives after the submission of his memorial, the remaining request for reimbursement for anticipated costs must be significantly reduced. Considering the above, and making its assessment on an equitable basis, the Court awards the applicant GBP 15,250 inclusive of VAT but less the amount received in legal aid from the Council of Europe (4,100 French francs).

### C. Default interest

34. 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 7.5% per annum.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Accepts* the Government's concession that there has been a violation of Article 5 §§ 3 and 5 of the Convention;

2. *Holds* that it is not necessary to consider whether there has been a violation of Article 13 of the Convention;

3. *Holds* that it is not necessary to consider whether there has been a violation of Article 14 of the Convention taken in conjunction with Article 5 § 3;

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months, the following amounts:
(i) in compensation for non-pecuniary damage, GBP 1,000 (one thousand pounds sterling);
(ii) for costs and expenses, GBP 15,250 (fifteen thousand two hundred and fifty pounds sterling) inclusive of value-added tax, less the amount received in legal aid from the Council of Europe;
(b) that simple interest at an annual rate of 7.5% shall be payable on those sums from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and notified in writing on 8 February 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Luzius WILDHABER
President

Paul MAHONEY
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinions are annexed to this judgment:
(a) concurring opinion of Mrs Palm joined by Mr Bonello, Mrs Tulkens and Sir Robert Carnwath;
(b) separate opinion of Mr Casadevall joined by Mrs Greve.

L.W.
P.J.M.

# CONCURRING OPINION OF JUDGE PALM JOINED BY JUDGES BONELLO, TULKENS AND Sir Robert CARNWATH

1. In paragraph 21 of the judgment the Court "accepts the Government's concession that there has been a violation of Article 5 §§ 3 and 5 of the Convention in the present case, with the consequence that it is empowered to make an award of just satisfaction to the applicant under Article 41, but it does not consider it necessary in the particular circumstances to examine the issues of interpretation of Article 5 §§ 3 and 5 raised by the applicant's complaint".

2. I agree that in a case like the present one where the respondent State concedes that there has been a violation and where the national legislation or practice has been changed accordingly, and where in addition the Court is satisfied that there is no reason of public policy to fix the case-law for the future and for all Contracting States, the Court may discharge the duty conferred on it by Article 19 of the Convention – namely "[t]o ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" – by accepting the Government's concession without itself going into any undecided general issues of interpretation raised by the case. Such an approach is in the interest of procedural economy as, in my view, it enables the Court to proceed, without further reasoning, to rule on the applicant's contested claims for just satisfaction under Article 41 of the Convention.

3. To be able to make an award of just satisfaction, the Court must, under the terms of Article 41, find a violation of at least one substantive Article and it must, in accordance with Article 45, give reasons for its judgment.

4. In the present case, the Court's reasons for finding a violation are precisely that the Government have conceded a violation**,** having moreover already amended the legislation at the root of the applicant's complaint, and that in the particular circumstances there is no call to examine the interpretative question of general application raised by the case.

5. The operative part of the judgment, however, appears to leave it open whether there was a violation in the present case, the Court merely holding that it "accepts the Government's concession that there has been a violation of Article 5 §§ 3 and 5 of the Convention". I find this formulation unfortunate as it makes the judgment unclear as to the Court's position. In so far as this formulation is not tantamount to a finding of a violation, it

introduces a new form of judgment which rules in favour neither of a violation nor of a non-violation and which yet makes an award of just satisfaction under the Article 41. This must be seen as an extension of the Court's competence according to the Convention.

6. The logic of accepting the Government's concession of a violation while refraining from settling an unresolved issue of interpretation must, to my mind, be that the Court also accepts that there *was* a violation in, and for the purposes of, the particular case. The operative part ought to have spelt this out explicitly. In short, in my view, when minded to accept a concession by a respondent State of a violation and to make an award of just satisfaction under Article 41, the Court may leave open for resolution another day a general question of interpretation of the Convention – provided of course that there are no reasons of public policy dictating otherwise – but it may not leave open whether there was a violation of the relevant substantive Article(s) in the particular case.

# SEPARATE OPINION OF JUDGE CASADEVALL JOINED BY JUDGE GREVE

*(Translation)*

1. I share the view put forward by the Government in their memorial that there has been a violation of Article 5 §§ 3 and 5 of the Convention, and the applicant should consequently be awarded just satisfaction. However, I must in this instance express my strong reservations about the new approach adopted by the Court in this judgment in paragraph 21 and in the first point of the operative provisions.

2. If it was not going to strike the case out of its list on account of a friendly settlement or for any other reason provided for in Article 37, the Court had a duty, in the exercise of its jurisdiction "concerning the interpretation and application of the Convention", in the words of Article 32, to rule on the merits and hold that there had been – or had not been – a violation of the provisions in question. In my view, those are the only two options available to the Court under the Convention.

3. It is apparent from Article 41 that an award of just satisfaction is subject to a prior finding that there has been a violation of the Convention or its Protocols. That being so, even allowing the Court a wide discretion to interpret that provision, I am not persuaded that the fact that the Court has accepted the Government's concession enables it, in itself, to award such satisfaction.

4. Even if the State conceded that there had been a violation of Article 5 §§ 3 and 5, the applicant (the only master of the litigation) maintained his complaint in the absence of a friendly settlement. He was accordingly entitled to a reasoned judgment on the merits (as required by Article 45) and not merely an acceptance of the Government's concession, and the Court, in my opinion, should have determined the questions before it.

5. Although the precedent dates from 1978 and is admittedly not binding on the new Court, I prefer the point of view expressed in the Ireland v. the United Kingdom judgment (18 January 1978, Series A no. 25) inasmuch as the Court "consider[ed] that the responsibilities assigned to it within the framework of the system under the Convention extend[ed] to pronouncing on the non-contested allegations of [a] violation ..." (p. 62, § 154) and "Accordingly, that part of the present case which concerns the said allegations cannot be said to have become without object; the Court considers that it should rule thereon, notwithstanding the initiatives taken by the respondent State" (p. 62, § 155).

6. Although it can be argued that the Court always retains the right to continue the examination of a case, even if there is a friendly settlement or the applicant withdraws his complaints (Article 37), the opening up of this "new third way", confined to a mere acceptance of a concession by the

respondent State, does not seem to me to be satisfactory in either spirit or letter, in the light of the wording of the Convention.