



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

FOURTH SECTION

CASE OF J.T. v. THE UNITED KINGDOM

(Application no. 26494/95)

JUDGMENT

STRASBOURG

30 March 2000

In the case of J.T. v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr V. BUTKEVYCH,
Mr J. HEDIGAN,
Mrs S. BOTOCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 March 2000,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case was referred to the Court as established under former Article 19 of the Convention by the European Commission of Human Rights (“the Commission”), on 3 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. 26494/95) against the United Kingdom lodged with the Commission under former Article 25 by a British national, Ms J.T. (“the applicant”), on 1 February 1995. The applicant, an involuntary psychiatric detainee, complained under Article 8 of the Convention about the absence of any means by which she could apply to change the identity of her nearest relative. On 20 May 1998 the Commission (First Chamber) unanimously concluded that there had been a violation of Article 8 of the Convention.

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 8 of the Convention.

2. The applicant was represented before the Court by Ms L. Scott-Moncrieff, a lawyer practising in London. The British Government (“the Government”) were represented by their Agent, Mr M. Eaton, Foreign and Commonwealth Office.

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 Fourth Section.

The Chamber constituted within the Section to consider the case 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)). Having taken part in the Commission's examination of the case, Sir Nicolas Bratza subsequently withdrew from sitting in the Chamber (Rule 28). Following the agreement later reached by the parties (see below), the Government waived the presence of the national judge for the Court's final examination of the case and, consequently, Mrs S. Botoucharova was appointed by the President of the Chamber to sit in the Chamber constituted to consider the case.

4. On 8 March 1999 the President of the Chamber acceded to the applicant's request not to have her identity disclosed (Rule 47 § 3).

5. On 12 October 1999 and 11 November 1999 the Agent of the Government and the applicant's representative, respectively submitted formal declarations to the Court accepting a friendly settlement of the case.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. In 1984 the applicant, who had a history of mental disorders, was committed as an involuntary patient to a psychiatric institution pursuant to section 3 of the Mental Health Act 1983. Initially, her detention was renewed for a six-month period and, thereafter, for twelve-month periods. Her detention was reviewed on numerous occasions by the Mental Health Review Tribunal and she was discharged in January 1996 after the last review.

7. Various psychiatric and social work reports compiled during the applicant's detention detailed, *inter alia*, the applicant's difficult relationship with her mother and referred to her repeated allegations that she had been sexually abused by her step-father (no proceedings were issued against her step-father in this respect). The reports reflected the impact on the applicant of her relationship with her mother and of her fear and "hatred" of her step-father. It was noted in a social work report dated August 1993 that the applicant was aware that her mother and step-father lived in the same house despite their divorce in 1977 and that, accordingly, she did not want her mother to know of her whereabouts. That report also referred to the applicant's wish to remove her mother as her nearest relative and to replace her with a particular social worker. However, her mother did not agree and it was noted that the matter remained "unresolved".

II. THE RELEVANT DOMESTIC LAW AND PRACTICE

8. The patient's "nearest relative" is designated pursuant to section 26 of the 1983 Act and is the first relative in a list of relatives in that section (in descending priority) who satisfy the relevant criteria. The nearest relative may authorise another person to carry out the functions of nearest relative (Regulation 14 of the 1983 Regulations).

9. Section 29 of the 1983 Act, insofar as is relevant, provides as follows:

"(1) The county court may, upon application ... direct that the functions of the nearest relative of the patient ... shall ... be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the court, is a proper person to act as the patient's nearest relative and is willing to do so.

(2) An order under this section may be made on the application of -

- (a) any relative of the patient;
- (b) any other person with whom the patient ... was last residing;
- (c) an approved social worker.

(3) An application for an order under this section may be made upon any of the following grounds, that is to say -

- (a) that the patient has no nearest relative within the meaning of this Act, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;
- (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;
- (c) that the nearest relative of the patient unreasonably objects to the making of an application for admission for treatment ...; or
- (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient from hospital ..., or is likely to do so."

AS TO THE LAW

10. The applicant complained under Article 8 of the Convention that she could not change her "nearest relative" appointed pursuant to section 26 of the Mental Health Act 1983 during her involuntary detention in a psychiatric institution.

11. By letter dated 11 March 1999, the Government indicated that they were pursuing a friendly settlement of the case and that they had put proposals in this respect to the applicant's representative. By letters dated 25 March and 1 April 1999, the applicant's representative and the Government, respectively confirmed to the Court the applicant's acceptance of the Government's offer of settlement.

12. By letter dated 12 October 1999 the Government outlined the terms of settlement. The relevant legislation was to be amended to provide the detainee with the power to make an application to court to have the "nearest relative" replaced where the patient reasonably objected to a certain person acting in that capacity. It was also to provide for the exclusion of certain persons from acting as "nearest relative". The applicant was also to be paid compensation of GBP 500 together with the reasonable legal costs of her application. The Government also confirmed that the compensation and the agreed sum in respect of costs had been paid and receipt had been acknowledged by the applicant.

13. The Government's letter of 12 October 1999 was forwarded to the applicant's representative, who subsequently acknowledged, by letter dated 11 November 1999, that the applicant had agreed to the Government's offer and was satisfied that the case should go no further.

14. The Court takes note of the agreement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

15. 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 March 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Matti PELLONPÄÄ
President