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

THIRD SECTION

CASE OF DOWNING v. THE UNITED KINGDOM

(Application no. 36525/97)

JUDGMENT

STRASBOURG

6 June 2000

In the case of DOWNING v. the United Kingdom,

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

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 29 June 1999 and 16 May 2000,

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

PROCEDURE

1. The case originated in an application (36525/97) against the United Kingdom lodged with the European Commission of Human Rights ("the Commission") under former Article 25 by Stephen Downing, a British national, on 18 April 1997. The applicants are represented by Mr J. Atkins of Woollcombe Beer Watts Solicitors, in Exeter. The Government of the United Kingdom are represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office.

The application concerned the applicant's complaints of a lack of review of the lawfulness of his continued detention as a prisoner serving a sentence of detention during Her Majesty's Pleasure.

2. On 1 July 1998, the Commission decided to give notice of the application to the respondent Government and invited them to submit their observations on its admissibility and merits. The Government submitted their observations on 8 October 1998, to which the applicant replied on 4 February 1999.

3. Following the entry into force of Protocol No. 11 to the Convention and in accordance with provisions of Article 5 § 2 thereof, the application falls to be examined by the Court.

In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Third Section.

4. On 29 June 1999, the Court declared the application admissible and decided that it was not necessary to hold a hearing.

5. In accordance with Rule 59 § 3, the President of the Chamber invited the parties to submit memorials on the issues in the applications. The Registrar received the applicants' memorial on 20 September 1999.

6. By letter dated 19 January 2000, the Government made proposals to settle the case on payment of GBP 500 pounds sterling for non-pecuniary damage and reasonably and necessarily incurred legal costs. By letter dated 15 March 2000, the applicant accepted the Government's offer.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 15 February 1974, the applicant then aged 17 was convicted of murder and sentenced to be detained during Her Majesty's pleasure. The "tariff" part of the applicant's sentence corresponding to punishment and deterrence, which was set at 16 years, expired in 1989.

8. The applicant's case was reviewed by the Parole Board in October 1990, in January 1993 and January 1996. The applicant did not receive any oral hearing. The file prepared in respect of the third review contained reports which strongly recommended that the applicant be transferred from a Category C (closed) to a Category D (open) prison. However, following allegations relating to the applicant's conduct and on the basis of further psychological and psychiatric reports sought as a result of those allegations, the Parole Board decided on 9 January 1996 that the applicant was not suitable for release or transfer to an open prison. The next review was recommended to take place 18 months later.

9. On 3 April 1996, the applicant applied for leave to apply for judicial review of this decision on the grounds that it was reached without giving him an oral hearing. His application was dismissed by the Divisional Court on 24 October 1996 on the grounds that a person detained during Her Majesty's pleasure could not derive a right to an oral hearing in the post-tariff period. Leave to appeal to the Court of Appeal was refused. Following a change in domestic procedure announced made by the Home Secretary, the applicant became eligible to an oral hearing some time between October and December 1997. The hearing took place on 5 November 1997. The Parole Board declined to order the applicant's release.

AS TO THE LAW

10. The Court notes that the applicant has accepted the Government's offer to settle the case on the terms set out above (paragraph 6). In these circumstances, it finds that the applicant no longer intends to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. It is

satisfied that respect for human rights does not require the continued examination of the application (Article 37 § 1 *in fine* of the Convention).

11. 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 6 June 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	J.-P. COSTA
Registrar	President