



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

THIRD SECTION

CASE OF SMITH AND GRADY v. THE UNITED KINGDOM

(Applications nos. 33985/96 and 33986/96)

JUDGMENT
(Just satisfaction)

STRASBOURG

25 July 2000

FINAL

25/10/2000

In the case of Smith and Grady 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. KÜRIS,

Sir Nicolas BRATZA,

Mrs H.S. GREVE,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 July 2000,

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

PROCEDURE AND FACTS

1. The case originated in two applications (nos. 33985/96 and 33986/96) against the United Kingdom of Great Britain and Northern Ireland lodged on 9 and 6 September 1996 respectively with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two United Kingdom nationals, Ms Jeanette Smith and Mr Graeme Grady (“the first and second applicants”).

2. In its judgment of 27 September 1999 (“the principal judgment”), the Court held that there had been a breach of Article 8 of the Convention as regards the investigations conducted into the applicants' sexual orientation by the armed forces and as a result of their subsequent discharge from the armed forces on the ground of their homosexuality in pursuance of the Ministry of Defence policy against homosexuals in the armed forces. It also found a violation of Article 13 taken in conjunction with Article 8. No separate issue was found to arise under Article 14 taken in conjunction with Article 8. The Court also found that there had been no violation of Article 3 either taken alone or in conjunction with Article 14 and that it was not necessary to examine the applicants' complaints under Article 10 either taken alone or in conjunction with Article 14 (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, §§ 112, 116, 123, 128 and 139, ECHR 1999-VI). On the same day, the Court decided two similar applications challenging the same policy of the Ministry of Defence, concluding that there had been a violation of Article 8 and that no separate issue arose under Article 14 taken in conjunction with Article 8 (see *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, §§ 105 and 109, 27 September 1999, unreported).

3. Claims for just satisfaction pursuant to Article 41 of the Convention had been submitted by the applicants in April 1999 and the Court had agreed to provide time to the parties to make further submissions in this respect. Accordingly, in the principal judgment the Court found that the question raised under Article 41 was not ready for decision and that it was necessary, account being taken of the possibility of an agreement between the parties, to reserve the question of just satisfaction (see the principal judgment, § 143, and point 6 of the operative provisions).

4. The observations of the United Kingdom Government (“the Government”) on the applicants' claims under Article 41 were received on 3 February 2000 and the applicants' comments on those observations were received on 31 March 2000.

5. The Chamber constituted within the Section to consider the question of just satisfaction under Article 41 of the Convention 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, President of the Section (Rules 12 and 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr L. Loucaides, Mr P. Kūris, Mr W. Fuhrmann, Mrs H.S. Greve and Mr K. Traja (Rule 26 § 1 (b)).

6. Having consulted the parties, the Chamber decided not to hold a separate hearing on this issue.

THE LAW

7. Article 41 of the Convention reads as follows:

“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.”

8. The applicants submitted that the Court's finding of a violation could not compensate them for the losses sustained. Both claimed compensation for pecuniary and non-pecuniary damage and reimbursement of legal costs and expenses. They argued that the Court should seek to put them, in so far as possible, in the position in which they would have been had they not been discharged, such an approach being consistent with that of the European Court of Justice and of the domestic courts in discrimination cases, as well as with the principles flowing from Articles 13 and 41 of the Convention.

9. The Government accepted, in principle, a pecuniary award in the case, but contested the applicants' assessments. They also considered that, while the Court's jurisprudence acknowledges the principle of *restitutio in integrum*, it also provides for a broader and more flexible approach to

compensation, particularly where the Court is invited to speculate as to what might occur in the future.

A. Non-pecuniary damage

10. The applicants claimed 30,000 pounds sterling (GBP) and GBP 20,000, respectively in compensation for non-pecuniary damage suffered, together with interest at 8% per annum from the date of discharge.

The first applicant submitted that both the investigation of her sexual orientation and her consequent discharge from the armed forces on the sole ground of her homosexuality were profoundly degrading and humiliating events. These events had, according to the first applicant, a significant, continuing and negative impact on her mental health. Her service discharge medical report dated 4 October 1994 recorded that she had depression and anxiety problems and was taking antidepressant medication. She also submitted the report of a consultant psychiatrist dated 31 March 1999, which described her ongoing and substantial anxiety and connected depression problems. The report indicated that those problems, which had not arisen prior to 1993, were related to her difficulties with the armed forces whose actions “appear[ed] to be casual”. A medical report, also dated 31 March 1999, described her psychological difficulties dating from July 1994 when she was first prescribed antidepressant medication and noted various continuing stress symptoms, the report indicating that certain of the first applicant's symptoms were related to her treatment by the armed forces.

The second applicant described himself as a resilient person but submitted that, nevertheless, he found the investigation process humiliating and degrading, the questions put to him intrusive and insulting and his consequent discharge from the armed forces, on the sole ground of his sexual orientation, inherently degrading, injurious to his feelings and extremely painful. Moreover, and as a result of the above, he cannot now pursue a career in a profession which he enjoyed and in which he excelled.

11. The Government considered the amounts claimed by the applicants to be excessive and suggested an award in the region of GBP 10,000 to 15,000, interest not being required to achieve fair compensation as it did not concern sums spent or lost by the applicants.

12. The Court recalls that, in its principal judgment, it found that both the investigations and consequent discharges constituted “especially grave” interferences with the applicants' private lives (principal judgment, § 90) for three reasons. In the first place, the Court considered that the investigation process was of an “exceptionally intrusive character”, noting that certain lines of questioning were “particularly intrusive and offensive”. Secondly, the Court considered that the discharge of the applicants had a “profound effect on their careers and prospects” and, thirdly, it found the absolute and general character of the policy striking, leading as it did to the discharge of

the applicants on the ground of an innate personal characteristic irrespective of their conduct or service records (*ibid.*, §§ 91-93). The principal judgment also noted that the High Court, in its judgment delivered on 7 June 1995 in the domestic judicial review proceedings, had described the applicants' service records as "exemplary" (*ibid.*, § 92) and had found that they had been "devastated" by their discharge (*ibid.*, § 30). Although not found to give rise to a violation of Article 3, these events were described in that context as having been "undoubtedly distressing and humiliating for each of the applicants" (*ibid.*, § 122).

13. The Court considers it clear that the investigations and discharges described in the principal judgment were profoundly destabilising events in the applicants' lives which had and, it cannot be excluded, continue to have a significant emotional and psychological impact on each of them. The Court therefore awards, on an equitable basis, GBP 19,000 to each applicant in compensation for non-pecuniary damage. It does not consider an award of interest on this sum to be appropriate given the nature of the damage to which it relates.

B. Pecuniary damage

14. Both applicants made detailed submissions in this respect. They recognised that expert evidence was required on the necessary assumptions and calculations to be made but submitted that they did not have the funds to engage the necessary expert.

15. The first applicant, currently unemployed, claimed compensation for both past and future pecuniary losses. She claimed GBP 64,186.20 (including a seven-year bonus of GBP 2,500 due in 1996) in compensation for her past loss of earnings, being the difference between her civilian income (social-welfare benefits and salary) and her service income had she remained in service, for the period running from the date of her discharge to 18 May 1999. She also claimed interest at 8% per annum from the date of discharge. She further submitted that the difference between her future civilian income and her future service earnings would have been GBP 167,737. In addition, she claimed a loss of GBP 358,299.20 in respect of the service pension, referring to the loss of the terminal grant (a lump sum) and of annual benefits on retirement.

As to her service prospects, she submitted that she intended to obtain and complete a full 22-year engagement with the armed forces (her statement on discharge dated 10 August 1994 indicated that this was her intention). She argued that she would have been promoted to junior technician at the end of her conversion course in January 1995, to corporal in January 1996 and to sergeant in January 1998, that it normally takes a further five to eight years to become a flight sergeant and a further five years to become a warrant officer, and that she would have become a warrant officer (or attained the

equivalent commissioned post as an officer) prior to retirement in 2011. She maintained that her exemplary service record, her abilities and her acceptance for the enrolled nurse conversion course in 1992 all favoured a prolonged engagement and excellent service promotional prospects. She submitted her station commander's discharge report which indicated that her performance on the conversion course was satisfactory and that "she could have successfully completed the course".

As regards civilian employment since her discharge, she referred to the significant and ongoing psychological and medical impact of the investigation and her consequent dismissal (see paragraph 10 above), arguing that she had therefore only been able to work on a factory production line for approximately eighteen months since her discharge. She submitted that those psychological and medical problems meant that she was likely to be unemployed and to be in receipt of social-welfare benefits until May 2001, when she could foresee beginning work as a carer.

Apart from this and the obvious difficulties in transferring from service to civilian employment, she argued that her search for civilian employment was hampered by a number of additional matters. In the first place, she was obliged to explain her certificate of discharge which read "services no longer required being unable to meet service obligations through circumstances beyond her control". Secondly, she had applied to ten different employment agencies and for twenty different jobs as an enrolled nurse but, as shown by the correspondence submitted, there were significant delays on the part of the Ministry of Defence in releasing references and information to potential employers, which she alleges caused her to lose certain employment possibilities. Thirdly, she argued that her employment and earning options were curtailed by the fact that the armed forces did not allow her to complete the conversion course examinations in September 1994, which would have allowed her to work as a civilian staff nurse. She submitted that there had been few positions available for enrolled nurses whose positions will, in any event, be replaced from 2000 by care assistants earning GBP 7,000 to 9,000 per annum.

Her assessment of the pension losses claimed was based on her reaching the rank of warrant officer and she assumed that she would live until she was 80 years old. Her calculation of the future loss of earnings claimed was based on her promotion only as far as sergeant in January 1998, on salaries applicable in April 1999 (provided by the Government) without any account being taken of likely salary increases or bonuses thereafter and on social-welfare benefits applicable in 1998.

16. The second applicant, currently working as an administrator in the London office of the Chicago Board of Trade, claimed compensation for future pecuniary loss only.

He claimed the sum of GBP 185,497.09 in compensation since his service earnings after 1 April 1999 (based on service salary figures for April

1999 provided by the Government) would have exceeded his potential civilian income. As regards the service pension scheme, he claimed compensation in the sum of GBP 599,217, being the difference between the retirement benefits offered by the service pension scheme and his current civilian pension scheme. Although his current pension scheme is also non-contributory, it is significantly less lucrative than the service pension scheme.

In calculating the above losses, he made the assumption that he would retire from service in 2018. He also argued that, in the meantime, he would have been promoted to flight sergeant by 1997, and that he would have obtained branch commission posts of flight lieutenant by 1999, of squadron leader by 2004 and of wing commander by 2010. He used service salary figures supplied by the Government for 1999, and pointed out that no service salary increases or bonuses were factored into his calculations, and that he erred on the side of caution as regards the speed of his potential promotions. He argued that his exemplary service records and evaluations were consistent with the above forecasted service promotions. As to his current civilian employment, he had assumed an annual earnings increase of 3.35% per annum, there being no promotion options given the staff structure of the office in which he works.

17. The Government accepted that there may be cases where it would be appropriate to award some compensation for pecuniary loss in this sort of context. However, they disagreed with certain principles, assumptions and calculations underlying the applicants' assessments and, accordingly, with the levels of compensation claimed by the applicants. The Government considered that no award should be made in relation to future earnings, given the large number of imponderables involved in their assessment.

As to the first applicant, the Government referred to a service career forecast completed in April 1999 by the armed forces and accepted that her service career would have taken her to sergeant by January 1998, but that further promotion was uncertain in the extreme. However, and while they accepted some emotional impact relating to her discharge, they did not accept that she had been unable to work save for the eighteen-month period mentioned and could not work until 2001. They argued that she should have taken further steps to secure employment and the transfer of her nursing skills, including further study. As to her pension claims, the Government confirmed that on discharge she had accrued a terminal grant of GBP 2,968.62 and a pension of GBP 989.54 per annum, which benefits were indexed and payable at the age of 60. Had she left the armed forces in January 1999 as a sergeant, those benefits would have been GBP 8,524.32 and GBP 2,841.44 per annum, respectively. They pointed out that no allowance had been made by the applicant for the possibility of obtaining pension benefits had she qualified as a nurse.

As to the second applicant, the Government also referred to a service career forecast prepared by the armed forces in April 1999. They accepted that there were reasonable prospects of his selection for promotion to flight sergeant at the end of 2001, and that the average time for promotion thereafter was 8.6 years, which promotion was in no sense guaranteed and difficult to predict. The submitted forecast, accordingly, indicated significantly lower service prospects than had been relied upon by the second applicant.

As regards his pension claims, the Government confirmed that on discharge he had accrued a terminal grant of GBP 10,121.55 and a pension of GBP 3,373.85 per annum (again indexed and payable at the age of 60). Had he remained in service until, for example, April 1999 and attained the rank of flight sergeant, his accrued benefits would have been GBP 18,535.95 and GBP 6,178.65 per annum respectively. However, the Government considered that pension loss should be treated as future loss, and should be calculated on the basis of contributions the armed forces would have made to the service pension scheme on the second applicant's behalf, and not on the basis of the loss of a lump sum and annual payments on retirement. They considered, moreover, that the second applicant had the opportunity to fund a pension at least up to the level of benefits which would have been provided by the service scheme.

In sum, the Government submitted that, given the uncertainty involved in the above assessments, a broad approach to the applicants' claims for pecuniary loss was both inevitable and desirable. A maximum award to the first applicant for any pecuniary damage sustained was proposed in the sum of GBP 10,000 to 15,000. They also proposed that no award be made to the second applicant or, alternatively, a maximum award of GBP 5,000 to 10,000.

18. The Court recalls that, in principle, a judgment in which it finds a violation of the Convention imposes on the respondent State a legal obligation to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see the *Papamichalopoulos and Others v. Greece* judgment of 31 October 1995 (*Article 50*), Series A no. 330-B, pp. 58-59, § 34).

However, in the present case, a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by the applicants is prevented by the inherently uncertain character of the damage flowing from the violations (see the *Young, James and Webster v. the United Kingdom* judgment of 18 October 1982 (*Article 50*), Series A no. 55, pp. 6-7, § 11). While the Court does not accept the Government's contention that no award should be made in respect of future losses given the large number of imponderables involved in their assessment, it is nevertheless the case that the greater the interval since the discharge of the applicants the more uncertain the damage becomes.

19. Accordingly, the Court considers that the question to be decided is the level of just satisfaction, in respect of both past and future pecuniary loss, which it is necessary to award to each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (see the *Sunday Times v. the United Kingdom* judgment of 6 November 1989 (*Article 50*), Series A no. 38, p. 9, § 15).

20. The Court recalls, in particular, paragraph 92 of the principal judgment where it explained why it considered that the discharge of the applicants “had ... a profound effect on their careers and prospects”. It referred to the applicants’ “relatively successful service careers in their particular field”, to their length of service, to their rank on discharge and to their “very positive” service records prior to and after discharge. In this latter respect, the Court noted that the Government had accepted that neither of the applicants’ service records nor their conduct gave any grounds for complaint and that the High Court in the domestic judicial review proceedings described their service records as “exemplary”. That court had also pointed out that there was no reason to doubt that, had the applicants not been discharged, they would have continued to perform their service duties entirely efficiently and with the continued support of their colleagues (see the principal judgment, § 30).

The Court went on to note (*ibid.*, § 92) the unique nature of the armed forces, a matter which had been underlined by the Government in their pleadings before the Court, and the consequent difficulty in directly transferring essentially military qualifications and experience to civilian life. It recalled that one of the reasons why it considered Mrs Vogt’s dismissal from her post as a schoolteacher to be a “very severe measure”, was the finding that schoolteachers in her situation would “almost certainly be deprived of the opportunity to exercise the sole profession for which they have a calling, for which they have been trained and in which they have acquired skills and experience” (*Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, p. 29, § 60).

The Court is of the opinion that the significant differences between service and civilian life and qualifications, together with the emotional and psychological impact of the investigations and of the consequent discharges (see paragraph 13 above), rendered it difficult for the applicants to find civilian careers which were, and would continue to be, equivalent to their service careers. Both applicants had access to certain armed forces’ resettlement services. However, the first applicant submitted that she was too psychologically affected by the events surrounding her discharge to take immediate and full advantage of those services. The second applicant did participate in a resettlement programme and he received a resettlement grant of GBP 5,583. However, he did not make any claim for past pecuniary loss.

21. The parties disagreed on the assumptions upon which the assessment of the pecuniary loss claims depended, in particular, on the applicants' service and civilian career prospects after the date of discharge.

However, it is not disputed that the first applicant began her service career in 1989 when she was 23 years old, enlisting for the maximum engagement available to her of nine years. She was promoted to senior aircraftwoman and then recommended for promotion in 1991-93 to junior technician, the latter promotion being subject to her completing the enrolled nurse conversion course. In 1992 she obtained a place on that course and was due to take her final examinations in September 1994, about two months prior to her discharge. It is also not contested that, on the date of discharge, her gross salary was approximately GBP 34.22 per day.

While the Government argued that the first applicant should have promoted her nursing career by further study, they did not dispute that she was not allowed to take the enrolled nurse conversion course examinations prior to her discharge in September 1994, and it is noted that her station commander considered that she could have successfully completed that course (see paragraph 15 above). Moreover, the Government accepted that successful completion of that course meant that she would probably have become a sergeant by January 1998. The Government also questioned her efforts to find civilian employment, but did not comment on her detailed submissions about the difficulties she encountered in obtaining necessary references and information from the Ministry of Defence.

It is also not disputed that the second applicant joined the armed forces in 1980 when he was 17 years old. By 1991 he had attained the rank of sergeant, at which stage he began work as chief clerk in Washington, leading the support staff team of the British Defence Intelligence Staff (Washington). On the date of discharge he had completed almost fourteen years' service, his gross salary was GBP 48.71 per day and the Government accepted that there were reasonable prospects of his promotion to flight sergeant at the end of 2001. In addition, the career forecast relied upon by the Government indicated that, had the offer of promotion to flight sergeant, together with the associated posting, been accepted by the second applicant and been approved by his commanding officer, he would have received an offer to extend his service to the age of 55, giving him a revised retirement date of 2018. Although promotion above flight sergeant was "by no means guaranteed", the career forecast accepted that the average time for such promotion was 8.6 years, which was prior to the last-mentioned retirement date.

22. Moreover, the Court considers significant the loss to the applicants of the non-contributory service pension scheme.

The lump sum and service pension which the first applicant will receive on retirement are substantially less than the amounts she would have received had she not been discharged, even if she had not achieved her

predicted promotions before retirement. Although no precise figures have been provided, the Court accepts that the contributions which would be required in order to achieve an equivalent level of pension from a private pension scheme are likely to be considerable. The same holds true, but to a lesser extent, for the second applicant. It is true that his current employment offers a non-contributory pension scheme. However, he submitted that the benefits of that scheme are significantly less advantageous than the service pension scheme.

The Court is of the view that the applicants can reasonably claim some compensation for the loss associated with the termination of their participation in the non-contributory service pension scheme from the date of their discharges in November and December 1994 respectively. The amount of the loss is necessarily speculative, depending as it does on, *inter alia*, the period during which the applicants would have remained in service and on their rank at the time of leaving service.

23. The Court further notes that the Government have not commented on the first applicant's submissions regarding a seven-year bonus, which bonus was due prior to the termination of her initial nine-year engagement.

24. Finally, the Court considers that interest can be claimed from the dates on which each element of past pecuniary loss accrued.

25. In such circumstances, and making its assessment on an equitable basis, the Court awards compensation (inclusive of interest claimed) to the first applicant in the sums of GBP 30,000 in respect of past loss of earnings, GBP 15,000 for future loss of earnings and GBP 14,000 for the loss of the benefit of the non-contributory service pension scheme, making a total award of compensation for pecuniary damage of GBP 59,000.

On the same basis, the Court awards compensation (inclusive of interest claimed) to the second applicant in the sums of GBP 25,000 in respect of future loss of earnings and GBP 15,000 for the loss of the benefit of the non-contributory service pension scheme, making a total award of compensation for pecuniary damage of GBP 40,000.

C. Costs and expenses

26. The applicants requested reimbursement of legal costs and expenses, in the total sum of GBP 50,731.57, for the Convention proceedings up to the date of the hearing in this Court on 18 May 1999. They claimed GBP 36,711.63 (inclusive of value-added tax – VAT) as regards their initial representation by a firm of solicitors and their subsequent representation by Liberty, and GBP 24,019.94 (inclusive of VAT) for representation by two junior counsel. No claim was made for any costs incurred after the hearing.

In describing the financial demands on him after discharge, the second applicant referred to a solicitor's bill of costs in the sum of GBP 808.83 relating to his proceedings before the Industrial Tribunal. However, he

claimed reimbursement of only GBP 200, being the cost of filing certain documents in the High Court and in the Court of Appeal, which he had paid and which were not covered by domestic legal aid.

27. The Government accepted some reimbursement of legal costs and expenses. However, they suggested a reduction to take account of the Court's findings in the principal judgment on the complaints under Articles 3, 10 and 14 of the Convention. In addition, they argued that the evidence and issues raised in the domestic proceedings largely mirrored those in the Convention proceedings, so that the bulk of the Convention work was done prior to the introduction of the present applications. Both applications, and the related applications of Mr Lustig-Prean and Mr Beckett, clearly raised the same issues, according to the Government, yet the present applicants instructed their own legal representatives. Given the sums claimed for work done by counsel and the latter's experience, the Government submitted that the additional solicitors' legal costs and expenses claimed were unnecessary and unreasonable as to quantum.

28. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

29. As to the second applicant's claim for GBP 200 as regards the judicial review proceedings, the Court notes that his solicitors, who represented him during the domestic proceedings, confirmed by letter that the second applicant discharged these domestic filing fees himself and the Court considers this claim reasonable.

30. Turning to the costs of the Convention proceedings, the Court does not accept the Government's contention that the nature of the applicants' submissions to the domestic courts in the judicial review proceedings and to this Court under the Convention were substantially the same. It also recalls that the voluminous report of the Homosexuality Policy Assessment Team (described in the principal judgment, §§ 51-62) was published after the domestic proceedings had terminated. That report formed the basis of the Government's core arguments before this Court in favour of the armed forces' policy against homosexuals (*ibid.*, §§ 95-99) and was reasonably the subject of substantial submissions by the applicants.

In addition, and contrary to the Government's position, the Court does not consider that its conclusions in the principal judgment on the applicants' complaints under Articles 3, 10 and 14 imply that the associated legal costs and expenses were unnecessarily incurred or were unreasonable as to quantum (see *Jordan v. the United Kingdom*, no. 30280/96, § 42, 14 March 2000, unreported). This is particularly so since all these complaints were declared admissible, detailed reasons led to the Court's finding of no

violation of Article 3, and the parties' submissions on the complaints under Articles 10 and 14 were not extensive.

Moreover, the Court notes that, apart from the initial introduction of the first applicant's case under the Convention, the applicants shared legal representatives.

31. However, the Court considers, as did the Government, that the issues in the applicants' cases were very similar. In addition, and while the applicants were entitled to instruct such lawyers as they chose, the Court would agree with the Government that, given the not inconsiderable involvement of both counsel in the case, the additional costs claimed by Liberty appear high. In addition, the Court notes that each of the three fee earners advised on the initial application, each attended two meetings on the case, each advised on just satisfaction and each attended the hearing before this Court. It does not consider that the costs claimed take account of this duplication of work.

Accordingly, the Court concludes that the legal costs and expenses for which the applicants claim reimbursement, pursuant to Article 41 of the Convention, cannot all be considered to have been “necessarily” incurred or to be “reasonable as to quantum” (see the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, pp. 37-38, § 80).

32. In such circumstances, the Court awards GBP 200 to the second applicant as regards his filing costs in the domestic proceedings. Deciding on an equitable basis, the Court also awards a total sum of GBP 32,000 to the applicants as regards the legal costs and expenses of their Convention proceedings. This latter sum is inclusive of any VAT which may be chargeable and is to be paid to the applicants less the amounts paid to the first applicant by the Council of Europe in legal aid.

D. Default interest

33. 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. *Holds* by six votes to one
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

- (i) GBP 19,000 (nineteen thousand pounds sterling) in respect of non-pecuniary damage;
- (ii) GBP 59,000 (fifty-nine thousand pounds sterling) in respect of pecuniary damage; and
- (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

2. *Holds* by six votes to one

- (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) GBP 19,000 (nineteen thousand pounds sterling) in respect of non-pecuniary damage;
 - (ii) GBP 40,000 (forty thousand pounds sterling) in respect of pecuniary damage;
 - (iii) GBP 200 (two hundred pounds sterling) for the costs and expenses of the domestic proceedings; and
- (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Holds* by six votes to one

- (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, GBP 32,000 (thirty-two thousand pounds sterling) for the costs and expenses of the proceedings before the Convention organs (inclusive of value-added tax), less the amounts paid by the Council of Europe in legal aid to the first applicant; and
- (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* unanimously the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 25 July 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting and partly concurring opinion of Mr Loucaides is annexed to this judgment.

J.-P.C.
S.D.

PARTLY DISSENTING AND PARTLY CONCURRING OPINION OF JUDGE LOUCAIDES

I beg to differ from the judgment of the Court on just satisfaction under Article 41 of the Convention. In that judgment, the majority based their award of compensation to the applicants on all of the violations found in the principal judgment of 27 September 1999. However, my view was that there had not been a violation of Article 8 as a result of the applicants' discharge from the armed forces on the ground of their homosexuality. Moreover, that discharge element was, in my opinion, the most substantial part of the applicants' cases. I cannot, therefore, agree with the Article 41 judgment. Furthermore, I do not think that, in these circumstances, it would serve any useful purpose for me to estimate separately the just satisfaction to award to the applicants for those violations in respect of which I did agree with the majority.

I should add, however, that in my opinion the assessment of non-pecuniary damage in this case should have taken account of the fact that, on their enlistment, the applicants were aware of the risk of their being discharged from the armed forces on the ground of their homosexuality in pursuance of the relevant official policy of the Ministry of Defence, which had been brought to their attention. In so far as this prior knowledge was not taken into account by the majority, I consider the amount awarded in respect of non-pecuniary damage to be excessive. Even apart from this latter point, I am of the view that the award for non-pecuniary damage is, in any event, excessive.