



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

THIRD SECTION

CASE OF I.J.L., G.M.R. and A.K.P. v. THE UNITED KINGDOM

(Applications nos. 29522/95, 30056/96 and 30574/96)

JUDGMENT
(Just Satisfaction)

STRASBOURG

25 September 2001

FINAL

25/12/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of I.J.L., G.M.R. and A.K.P. 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,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 4 September 2001,

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

PROCEDURE

1. The case originated in three applications (nos. 29522/95, 30056/96 and 30574/96) against the United Kingdom of Great Britain and Northern Ireland lodged 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 three British nationals, Mr I.J.L., Mr G.M.R. and Mr A.K.P. (“the applicants”), on 30 November, 18 December and 8 December 1995 respectively.

2. In a judgment delivered on 19 September 2000 (“the principal judgment”), the Court held that there had been a violation of Article 6 § 1 of the Convention as regards the prosecution’s use at the applicants’ trial of statements which they had been obliged to give under statutory compulsion to Inspectors from the Department of Trade and Industry (“the DTI Inspectors”) (I.J.L., G.M.R. and A.K.P. v. the United Kingdom, nos. 29522/95, 30056/96 and 30574/96, ECHR 2000-IX).

3. Under Article 41 of the Convention the applicants sought just satisfaction in respect of costs and expenses incurred in the domestic and Convention proceedings. They informed the Court at the merits stage of the difficulties which they had in quantifying the claim and requested that the Article 41 issue be adjourned.

4. In the principal judgment, the Court held that the question of the application of Article 41 of the Convention was not ready for decision as regards the applicants’ claim for costs and expenses. The Court accordingly reserved it and invited the applicants to submit, within two months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, §§ 151-152, and point 8 of the operative provisions). The applicants subsequently drew the Court’s

attention to their intention to request the referral of their case back to the Court of Appeal and requested that consideration be given to the adjournment of the Article 41 issue *sine die*. The Court rejected that submission while agreeing to extend by one month the period for submission by the applicants of their observations.

5. The applicants and the Government each filed observations. The President granted leave to the first applicant to submit further observations in response to the Government's observations.

6. Having consulted the parties, the Chamber decided not to hold a separate hearing on the Article 41 issue.

THE LAW

7. 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. Costs and expenses

1. *The parties' submissions*

8. The applicants pointed out at the outset that their submissions under Article 41 of the Convention were without prejudice to the scope of any claims which may be recoverable by them under domestic law following their application to the Criminal Cases Review Commission to have their case referred back to the Court of Appeal. The costs and expenses which they sought to recuperate in the Convention proceedings related to those which were actually and necessarily incurred by them in order to seek through the domestic legal system redress of the specific violation found by the Court, namely the denial of a fair trial on account of the prosecution's use of statements obtained from them under statutory compulsion. They maintained that the amounts claimed by each of them were reasonable as to quantum.

9. The applicants, with reference to detailed invoices, quantified their claims for costs and expenses incurred in the domestic and Convention proceedings as follows:

(i) **the first applicant:** GBP 614,002.75. The first applicant noted that the amount claimed was made up of the sum of GBP 548,109.08, which represented, firstly, solicitors' and counsel's costs incurred for the purposes of the 1990 trial proceedings before Mr Justice Henry and the 1995 Court of

Appeal proceedings, and, secondly, the sum of GBP 65,893.67, which represented the costs incurred in the Convention proceedings on account of, *inter alia*, his use of a solicitor (subsequently a barrister) specialising in Convention law and practice, Mr Piers Gardner (GBP 31,646.10).

The first applicant stressed that, as regards the domestic proceedings, the amount claimed (GBP 548,109.08), was reached by taking a total of 25% of the overall costs of the criminal proceedings through to the applicant's trial in 1990 and a total of 35% of the overall costs of the 1995 Court of Appeal hearing. He submitted that the percentages used reflected a reasonable estimate of the total costs incurred in seeking redress for the specific Convention breach established by the Court.

As regards the claim arising out of the Convention proceedings (GBP 65,893.67), the first applicant drew attention to the fact that it was based on an estimated 25% of the total costs incurred in those proceedings in advancing and defending the points relevant to the Court's ultimate finding of a violation of Article 6 § 1.

(ii) **the second applicant:** GBP 532,002.29. The second applicant stated that the amount claimed related to the estimated 25% proportion of the total costs (GBP 2,125,821.76) which were incurred by him at the domestic and Convention levels in seeking redress in respect of the specific violation ultimately established by the Court. The second applicant explained that the proportionate amount claimed covered the costs paid to his solicitors and leading and junior counsel in the proceedings before Mr Justice Henry in 1990 (GBP 395,579.48, or 25% of the total costs) and in the 1995 Court of Appeal proceedings (GBP 96,394.89, or 25% of the total costs), as well as before the Commission and Court (GBP 40,027.92, or 25% of the total costs). He stated that the amount claimed also reflected the fees paid to Mr Piers Gardner for his specialist contribution to the processing of the case from 1994 onwards (GBP 22,701.15, or 25% of the total fee).

(iii) **the third applicant:** GBP 117,618.88. The third applicant indicated that this sum represented fees paid in respect of the processing of the case in the Convention proceedings from November 1995 onwards by, among others, Mr Keith Oliver, a senior partner in his firm of solicitors (GBP 31,950.00), by Ms Clare Montgomery QC (GBP 23,911.25) and by Mr Piers Gardner, the above-mentioned Convention specialist (GBP 55,505.44).

10. The Government submitted that, in the proceedings before the Court, the applicants engaged in a series of detailed and complex arguments which were rejected and the overwhelming majority of the time and cost needed to deal with their applications was referable to these failed arguments. In their view, the Government should not bear responsibility for applicants with substantial funds who choose to employ expensive lawyers to run time-consuming arguments. They contended that the Court should in the circumstances make no or a minimal award under Article 41. Alternatively,

some global reduction to any award otherwise justifiable under that provision should be made.

11. In this latter connection, the Government drew attention to their view that there were few, if any, contentious factual matters involved in the determination of the only two real Convention issues relevant to the Court's finding of a violation in the case, namely the six-month rule and the compelled statements point. The Government, predictably, had conceded a violation on the latter point in the light of the Court's ruling in the *Saunders v. the United Kingdom* case (*Reports of Judgments and Decisions* 1996-VI). They maintained that these issues could and should have been dealt with by one firm of solicitors, having regard also to the fact that the applicants made common use of a Convention expert, Mr Piers Gardner, to prepare and deploy the arguments of principle on the relevant and, in the Government's view, straightforward Convention issues. On that account, only one set of solicitors' costs should be awarded in respect of the Convention proceedings.

12. The Government further contested the method of calculation used (the global percentage approach) by the first and second applicants to assess the costs incurred in the Convention proceedings. They observed that there was considerable discrepancy in the actual amounts claimed by each of the applicants even though the relevant Convention issues were identical as regards all three applicants. Furthermore, there was no attempt to explain or justify, *inter alia*, why certain costs needed to be incurred, for example the amount of GBP 23,911.25 paid by the third applicant by way of a fee to Ms Clare Montgomery QC, or the costs claimed by the same applicant of a one-day journey to Strasbourg by the Convention expert, Mr Piers Gardner. The Government further criticised the lack of any real attempt to restrict the costs and expenses within the limits set out in paragraph 151 of the Court's principal judgment.

13. In the Government's submission, a reasonable maximum level of costs truly referable to the relevant Convention issues would have been in the region of GBP 2,250 in total, representing some fifteen hours of work at an average fee rate of GBP 150 per hour. To this could be added an amount representing the reasonable cost of researching and presenting the relevant Convention issues, which the Government assessed at GBP 4,500 based on some thirty hours work at GBP 150 per hour. In the Government's view, an overall amount of GBP 6,750 for the Convention proceedings would be more in keeping with the Court's criteria governing awards under Article 41 and the Court should reject the applicants' extraordinary and unreasonable claim under this head.

14. As to the costs claimed by the applicants for the domestic proceedings, the Government considered that the applicants' attempts to rely on Article 6 as a means of securing redress in respect of the prosecution's use of the compelled statements were never likely to succeed,

having regard to the status of the Convention in domestic law at the material time. Furthermore, little time and cost were spent by the applicants' lawyers in advancing the Article 6 issue before the domestic courts, as opposed to the time and means devoted to their attempts to have the compelled statements ruled inadmissible under section 78 of the Police and Criminal Evidence Act 1984.

15. The Government reiterated their opposition to the method of calculation used by the first and second applicants to assess the costs claimed for the domestic proceedings, the more so in this context since there were only two attempts by the applicants' lawyers to exclude the compelled statements and obtain redress, and these attempts involved only partial or limited reliance on Article 6. In the Government's opinion, and only if the Court were minded to make an award in respect of the domestic proceedings, an amount of GBP 18,000 might be envisaged. They explained that this sum was based on a total of some twenty hours' work at an average hourly rate of GBP 150 in order to reflect the instruction and attendance by solicitors before Mr Justice Henry in the trial proceedings and the 1995 Court of Appeal hearing, together with a maximum of GBP 15,000 for counsel's fees for preparing and presenting the Convention arguments on these occasions.

16. The Government concluded that the maximum justifiable total, with the addition of GBP 1,000 to the above-mentioned calculations in order to take account of sundry disbursements, should be in the region of GBP 25,750.

17. The first applicant replied that he was entirely justified in having separate representation in the domestic proceedings, having regard to the need to avoid a conflict of interests with his co-defendants at the trial and to the absence of any Convention obligation to mount a joint application to the Court together with the second and third applicants.

As to the Government's challenge to the reasonableness of the costs claimed by him for the domestic proceedings, the first applicant observed that he was ordered by the trial judge to pay prosecution costs of GBP 333,000, an amount equivalent to one quarter of the total costs of the criminal proceedings. Furthermore, whereas the Government asserted that counsel's fees for the applicants in respect of the criminal proceedings should be charged at GBP 150 per hour, they overlooked the fact that the fees for Counsel for the Crown in those same proceedings were set at an hourly rate of GBP 250 plus value-added tax. In addition, the Government were represented by a sizeable and experienced legal team both at the trial and before the Court of Appeal. The first applicant also contested, *inter alia*, the accuracy of the Government's attempts to pinpoint those parts of the domestic proceedings devoted to the compulsory statements issue.

2. *The Court's assessment*

18. The Court recalls that in its principal judgment of 19 September 2000 it found a violation of Article 6 of the Convention only as regards the use made by the prosecution at the applicants' trial of the evidence which they gave to the DTI Inspectors under statutory compulsion (see point 1 of the operative part of the judgment). In reserving the question of Article 41 of the Convention (see point 8 of the operative part), it considered that only those costs and expenses which were reasonable as to quantum and which had been actually and necessarily incurred in order to seek through the domestic legal system redress of the aforesaid violation and to have the same established by the Convention institutions were recoverable and that all other heads of claim of claim were disallowed (see §§ 151-2).

19. The Court considers that the issues in all three applicants' cases were the same as regards both the domestic and Convention proceedings. This has not been disputed by any of the applicants, although they have insisted throughout the Convention proceedings that each is to be regarded as an applicant in his own right. In the Court's opinion, none of the applicants can be faulted for having chosen to be represented by separate firms of solicitors either in the domestic proceedings or in the proceedings before the Commission and the Court. Nevertheless, it considers that the costs claimed in respect of the domestic and Convention proceedings do not take sufficient account of the similarity of the cases and the potential for efficient co-ordination among the applicants' legal representatives. This is especially true of the Convention proceedings given the applicants' common use of the services of a Convention expert. This factor must be given due weight in deciding whether the various costs claimed were necessarily incurred.

20. Moreover, the Court is not persuaded by the first and second applicants' estimate of the time devoted by them in the domestic proceedings to having the transcripts of the evidence which they were obliged under statute to give to the DTI Inspectors ruled inadmissible. Having regard to the totality of the arguments which they relied on before the trial judge and on appeal on this point, it is of the view that their estimated percentage is set too high. This consideration is relevant to the Court's determination of whether certain of the costs claimed for the domestic proceedings were actually incurred. At the same time, the Court disagrees with the Government's view that the compulsory statements issue only occupied minimal court time. Although the applicants may not have concentrated the bulk of their arguments on this point from the specific standpoint of Article 6 of the Convention, they did seek to secure redress in this respect by their appeal to section 78 of the Police and Criminal Evidence Act 1984 and, as noted in the principal judgment (§ 82), a significant part of the prosecution case against them consisted of the transcripts of their interviews with the DTI Inspectors.

21. The Court must also have regard to the fact that the Government conceded a violation of Article 6 in view of the conclusion reached in the above-mentioned Saunders judgment. In its opinion, this concession facilitated the applicants' pleadings on the compulsory statements issue. It does not consider, accordingly, that the first and second applicants' estimated percentage of time devoted to this issue in the Convention proceedings can be said to be a fair reflection of the time actually required to address the issue, even having regard to the need to overcome the Government's challenge to its admissibility based on the six-month rule. It further considers that the costs claimed in the Convention proceedings by all three applicants cannot be said to be reasonable as to quantum and would in particular observe that the shared use of a Convention expert did not have the desired effect of minimising costs.

22. Having regard to the above considerations, and deciding on an equitable basis, the Court awards the applicants a global amount of GBP 40,000.

B. Default interest

23. 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. Holds

(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, for costs and expenses, a global amount of GBP 40,000 (forty thousand pounds sterling), plus any value-added tax that may be chargeable;

(b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement;

2. Dismisses the remainder of the applicants' claims for costs and expenses.

Done in English, and notified in writing on 25 September 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President