



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

SECOND SECTION

CASE OF M.G. v. THE UNITED KINGDOM

(Application no. 39393/98)

JUDGMENT

STRASBOURG

24 September 2002

FINAL

24/12/2002

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 M.G. v. the United Kingdom,

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

Mr J.-P. COSTA, *President*,

Sir Nicolas BRATZA,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 July 2001 and 3 September 2002,

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

PROCEDURE

1. The case originated in an application (no. 39393/98) 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 a United Kingdom national, M.G. ("the applicant"), on 8 August 1997.

2. The United Kingdom Government ("the Government") were represented by their Agent, Ms R. Mandal, Foreign and Commonwealth Office. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged, in particular, inadequate disclosure by the local authority of his social service records, records which related to his time spent as a child in the care of the local authority.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. It was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 3 July 2001 the Court declared the application partly admissible.

7. The applicant, but not the Government, filed further observations on the merits (Rule 59 § 1).

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1960 and he lives in Leicester. He is the eldest of three children. He was in voluntary care with the social services' department of the local authority for five periods during his childhood: 8 September – 6 November 1961, 15 February – 20 July 1962, 26 October – 23 December 1962, 4 April 1963 – 4 April 1966 and 16 January – 8 April 1967.

10. During these periods his mother was receiving periodic psychiatric treatment and his father had some difficulty coping with the children on his own. The applicant had contact with both parents while in care: there was contact each week and weekend during the second period of care, there were visits over every weekend and then fortnightly weekend visits by the end of the fourth (and longest) period, and those fortnightly weekend visits continued during the fifth period of care. It is not known how much parental contact there was during the first and third periods of care.

11. By letter dated 10 April 1995, the applicant requested access to his social service records. By letters dated 5 and 9 June 1995, he requested specific information including whether he had ever been on the “risk register”, whether his father had been investigated or convicted of crimes against children and about the responsibility of the local authority for abuse he had suffered as a child.

12. On 13 June 1995 a social worker discussed with the applicant the access procedures and the information sought. On 27 June 1995 that social worker went through background information gleaned from the file with the applicant (concerning the dates and places of care) and provided him with hand-written notes of that information.

13. On 22 August 1995 the same social worker provided the applicant with further information gleaned from the file in the form of typed notes (covering September 1961 to March 1966). She also discussed certain areas of particular concern to the applicant including the impact of childhood neglect and ill-treatment which he remembered at the hands of his father, his feelings about having had a violent father and his vague suspicions of having been abused while in local authority institutional care. They also discussed the allegations of ill-treatment of the applicant by his father which

had been made by neighbours via the school to the local authority in November 1966, and the consequent investigation and decisions made by the local authority. The social worker also provided the applicant with various documents, including letters from his father to the social services between August 1962 and February 1967, social service progress reports dated November 1961 and April 1963, medical treatment permission forms signed by his father between September 1961 and February 1962, child care agreements with his father from September 1961 to April 1963, a medical report card dated January 1967 and a copy of his birth certificate. He was also given a report of a Child Care Officer dated 16 March 1967 (which was prepared for a case conference to be held on 17 March 1967) together with notes of that case conference. The latter report provided further detail of the allegations of ill-treatment in November 1966, of the consequent investigation and of the recommendations of the Child Care Officer.

14. By letter dated 18 September 1995, the social worker wrote to the applicant with more typed information taken from his file. That note dealt with the period April 1966 – September 1976. It included brief references to the applicant returning home in April 1967, to the family's move in October 1975 and to a supervision order made in respect of the applicant by a juvenile court in August 1976. She also gave the applicant a typed note recording the information which had been given orally to him during their last meeting, which note included further details of the period 1961-1963.

15. By letter dated 12 June 1996 to the local authority the applicant's legal representatives noted that the applicant had been provided with summary information and certain documents. They requested that he be allowed full access to his file. The local authority responded by letter dated 25 June 1996, pointing out that his social service records had been created prior to the entry into force of the Access to Personal Files Act 1987.

16. Further to the applicant's queries, the local authority confirmed by letter dated 12 July 1996 that there were no detailed records relating to him after 1967 except an indication of juvenile offending. It also noted that there was little mention of ill-treatment, but it enclosed the above-mentioned report of the Child Care Officer dated 16 March 1967. That letter accepted that the attitude expressed in that report would not have been acceptable in 1996 given the more developed understanding of child abuse matters.

17. In his letter of 21 January 1997, the applicant stated that memories of abuse suffered by him began to return shortly after March 1995 and that he was now in full possession of his memories, was being counselled and had consulted solicitors about a negligence action against the local authority. He requested specific information about the allegations of ill-treatment made in November 1966 and about his being abused by his father for eight years thereafter. The local authority responded by letter dated 17 February 1997, referring the applicant to the information already

provided to him in 1995 and to the differences between social work standards and procedures in 1997 and in the 1960s.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The Court of Appeal in Gaskin v. Liverpool Corporation (1980 1 WLR 1459) held that the High Court, in refusing access to the relevant records, had correctly balanced the public interest in maintaining an efficient child-care system with the individual's interest in obtaining access to records, and that it was not necessary for the court to review the records in question in order to so decide.

19. In 1983 a binding circular, LAC(83)14, was issued setting out the principles to be applied by local authorities in permitting access to their care records. Access to records was, in principle, to be permitted subject to necessary exceptions (such as the preservation of third party confidences and the protection of sources).

20. The Access to Personal Files Act 1987 and the Access to Personal Files (Social Services) Regulations 1989 both entered into force on 1 April 1989. The Act and the Regulations gave subjects the statutory right to know what was recorded about them in manually maintained records held by the local authority for the performance of social service functions. A number of exceptions were retained for the preservation of third party confidences and the protection of sources, but there was a right of review (and, subsequently, of judicial review) of a refusal of access. The Act and Regulations did not, however, apply to records created before 1 April 1989.

21. Circular LAC(89)2 was issued to provide guidance to the local authorities on the implementation of the 1987 Act and the 1989 Regulations. The previous circular (LAC(83)14) was cancelled and Paragraph 7 of Appendix 1 to the new circular pointed out that, while there was no obligation to furnish pre-April 1989 information, “there is likely to be significant advantage in authorities making available as much information as possible. This could lead to greater clarity and understanding of an individual's background.”

22. On 1 March 2000 the Data Protection Act 1998 (“the 1998 Act”) came into force and repealed the 1987 Act, the 1989 Regulations and circular LAC(89)2. It provided a statutory right of access for a “data subject” to information held about him in care records and other personal files (both manual and electronic) regardless of the date when the information was recorded, together with a right of appeal to the domestic courts or to the Data Protection Commissioner if access were refused, or where a contributor or a relevant third party had not consented.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained about a lack of unimpeded access to his social service records held by the local authority and, in its decision on the admissibility of this complaint, the Court considered that it fell within Article 8 of the Convention which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private and family ... life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ..., for the protection of health or morals, or for the protection of the rights and freedoms of others.”

24. The Government pointed out that the applicant had had prompt, comprehensive and satisfactory access to his social service records in 1995 in accordance with circular LAC(89)2 which was the best practice at that time. In addition, the Government provided, annexed to their observations to the Court, what was described as a full copy of his social service records, with the exception of certain documents and certain information (masked from the documents submitted), the disclosure of which would have breached a duty of confidence owed to third parties and, in particular, to the applicant's siblings. The disclosed documents dated from September 1961 to March 1967. The Government stated that there was no other document referring to the applicant between 1967 and 1976, apart from one irrelevant file note, and that there were no allegations of abuse made to the local authority during that later period.

25. According to the Government, the case of *Gaskin v. the United Kingdom* (judgment of 7 July 1989, Series A no. 160) was distinguishable from the present case: it was irrelevant that the present applicant had no appeal to an independent authority against any refusal to disclose because he received comprehensive information in 1995. In so far as it was considered that there was a failure to disclose certain records to which the applicant was entitled, the Government referred to the appeals possible under the 1998 Act since its entry into force on 1 March 2000.

26. The applicant pointed out that he had not yet received all of his social service records and referred, in particular, to the period from April 1967 through to 1976 for which he has not received any records whatsoever.

He argued that one of the main reasons he sought access to his records was his belief that he had been physically abused when he was a child by his father, and his consequent need to obtain all relevant information about his childhood in order to come to terms with the emotional and psychological impact of any such abuse, and to understand his own

subsequent and related behaviour. He therefore maintained that the failure to allow him unimpeded access to all social service records relating to him during those periods constituted a violation of his rights guaranteed by the Convention.

27. The Court recalls that it has considered the question of access by an individual to his childhood social service records under Article 8 of the Convention in the above-cited case of *Gaskin v. the United Kingdom*. In that case, the Court agreed (with the former Commission) that Mr Gaskin's file provided a substitute record for the memories and experience of the parents of a child who was in care, that it contained information concerning highly personal aspects of Mr Gaskin's childhood, development and history and that it thus contained the principal source of information about his past and formative years. The Court went on to find that Mr Gaskin's records undoubtedly related to his private and family life in such a way that the question of access thereto fell within the ambit of Article 8.

In determining whether a positive obligation existed under Article 8, the Court had regard to the fair balance that had to be struck between the general interest of the community and the interests of the individual concerned (see § 42 of the *Gaskin* judgment). It went on to note that persons in Mr Gaskin's situation had a vital interest, protected by the Convention, in receiving information necessary to know and understand their childhood and early development. It accepted that making access to records dependent on the consent of the contributor (the position in the United Kingdom in relation to records compiled prior to 1989) could, in principle, be compatible with the Convention. However, it found that the absence of any independent authority finally deciding on access to records in cases where the contributor was not available, or improperly withheld consent, constituted a violation of the State's obligation under Article 8 of the Convention (§ 49 of the *Gaskin* judgment).

28. In the present case, the Court considers that the social service records, which contain the principal source of information regarding significant periods of the applicant's formative years, relate to his private and family life. It is not suggested that the manner or breadth of disclosure was not in accordance with domestic law.

29. As to compliance with any positive obligation in the present case and, in particular, as to where the fair balance lies between the general interest and the interests of the applicant, the Court is of the view that the applicant's interest in obtaining the documents sought can be considered to be as strong as that of Mr Gaskin: the records requested by the applicant relate to five significant periods he spent in care when he was relatively young, the longest period (of three years) beginning when he was only 3 years of age. The Court notes that these periods of care as a young child allow the present case to be distinguished from the case of *Martin v. the United Kingdom* (application no. 27533/95, decision of 28 February 1996,

Decisions and Reports (DR) 84, p. 169), involving an intermittent period of mental health treatment for less than four years, beginning when that applicant was around nineteen years of age.

In addition, one of the main reasons the present applicant sought access to his records was his sincere belief that he had been physically abused when he was a child by his father and his need to obtain as much information as possible about that period in order to come to terms with the emotional and psychological impact of any such abuse and to understand his own subsequent and related behaviour. It is true that his parents had some access to him during those periods in care and could therefore constitute a source of information for him. However, his mother had psychiatric problems at the relevant time. His father died in 1980 and, in any event, could not be considered to have been a satisfactory source of information about abuse which the applicant alleges was committed by him.

30. Consequently, the applicant was given limited access to his records in 1995 when compared to the copy records now submitted in the Government's observations. In addition, he had no statutory right of access to those records or clear indication by way of a binding circular or legislation of the grounds upon which he could request access or challenge a denial of access. Most importantly, and as in Mr Gaskin's case, he had no appeal against a refusal of access to any independent body. The disclosure of the copy records in the Government's observations is demonstrative of the necessity for such an independent appeal, given that significant portions of those copy records are blanked out and certain documents have been retained on the basis that non-disclosure is justified by the duty of confidence to third parties.

31. In such circumstances, the Court concludes that there has been a failure to fulfil the positive obligation to protect the applicant's private and family life in respect of his access to his social service records from April 1995 when the applicant first requested them.

However, from 1 March 2000 (the date of entry into force of the Data Protection Act 1998) the applicant could have, but has not, appealed to an independent authority against the non-disclosure of certain records on grounds of a duty of confidentiality to third parties. He has not demonstrated therefore any failure by the State to fulfil a positive obligation after 1 March 2000 since he failed to use the appeal process available from that date.

32. Accordingly, the Court concludes that there has been a violation of Article 8 of the Convention in respect of the applicant's access, between April 1995 and 1 March 2000, to his social service records.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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. Damages

34. The applicant requested between 15,000-19,000 pounds sterling (GBP) financial compensation. The Government submitted that there was no causal link between the applicant's claim for non-pecuniary damages and the violation established. They also pointed out that he had had access to his records by 1995 and that the Court does not award non-pecuniary damages for distress, anxiety, frustration and deprivation of procedural opportunities.

35. The Court notes that the applicant has not specified any pecuniary loss suffered by him and any such claim for compensation is therefore rejected.

36. However, in so far as he claims compensation for non-pecuniary loss, the Court acknowledges that the applicant may have suffered some emotional distress and anxiety by reason of his limited access to the relevant records in 1995 and as a result of the absence of a statutory right of access to those records, of a clear indication of the grounds upon which he could request access and of any independent appeal procedure (as outlined at paragraph 31 above and see the above-cited Gaskin judgment, at § 58).

Making a determination on an equitable basis, the Court awards to the applicant 4,000 euros (EUR) in respect of non-pecuniary loss suffered by him.

B. Default interest

37. Default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant in respect of non-pecuniary damage, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) to be converted into pounds sterling at the date of settlement;
 - (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 September 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President