



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

COURT (PLENARY)

**CASE OF BROGAN AND OTHERS v. THE UNITED KINGDOM
(ARTICLE 50)**

(Application no. 11209/84; 11234/84; 11266/84; 11386/85)

JUDGMENT

STRASBOURG

30 May 1989

In the case of Brogan and Others*,

The European Court of Human Rights, taking its decision in plenary session in pursuance of Rule 50 of the Rules of Court and composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr J. CREMONA,
Mr Thór VILHJÁLMSSON,
Mrs D. BINDSCHEDLER-ROBERT,
Mr F. GÖLCÜKLÜ,
Mr F. MATSCHER,
Mr L.-E. PETTITI,
Mr B. WALSH,
Sir Vincent EVANS,
Mr R. MACDONALD,
Mr C. RUSSO,
Mr R. BERNHARDT,
Mr A. SPIELMANN,
Mr J. DE MEYER,
Mr J.A. CARRILLO SALCEDO,
Mr N. VALTICOS,
Mr S.K. MARTENS,
Mrs E. PALM,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 25 April and 24 May 1989,

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

PROCEDURE AND FACTS

1. The case was brought before the Court on 15 July 1987 by the European Commission of Human Rights ("the Commission") and on 3 August 1987 by the Government of the United Kingdom of Great Britain and Northern Ireland ("the Government"). It originated in four applications (nos. 11209/84, 11234/84, 11266/84 and 11386/85) against the United Kingdom which had been lodged with the Commission, on 18 October

* Note by the Registrar: The case is numbered 10/1987/133/184-187. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

1984, 22 October 1984, 22 November 1984 and 8 February 1985 respectively, by four British citizens, Mr Terence Brogan, Mr Dermot Coyle, Mr William McFadden and Mr Michael Tracey.

As regards the facts of the case, reference is made to paragraphs 11 to 41 of the Court's judgment of 29 November 1988 ("the principal judgment" - Series A no. 145-B, pp. 19-25).

2. In that judgment the Court held, *inter alia*:

(a) that there had been no violation of Article 5 § 1 (art. 5-1) of the Convention, the applicants' detention having been based on a reasonable suspicion of commission of an offence and effected for the purpose of bringing them before the competent legal authority (paragraphs 49-54 of the reasons and point 1 of the operative provisions, pp. 28-30 and 37);

(b) that there had been a violation of Article 5 § 3 (art. 5-3) in respect of all four applicants, in that they had not been brought promptly before a judge or other officer authorised by law to exercise judicial power (paragraphs 55-62 of the reasons and point 2 of the operative provisions, pp. 30-34 and 37);

(c) that there had been no violation of Article 5 § 4 (art. 5-4), the applicants having been entitled to take proceedings of the nature required by this provision (paragraphs 63-65 of the reasons and point 3 of the operative provisions, pp. 34-35 and 37);

(d) that there had been a violation of Article 5 § 5 (art. 5-5) in respect of all four applicants, in that they had no enforceable claim for compensation before the domestic courts for the breach of Article 5 § 3 (art. 5-3) (paragraphs 66-67 of the reasons and point 4 of the operative provisions, pp. 35 and 37);

(e) that there was no call to examine the application of Article 50 (art. 50) in relation to reimbursement of any costs or expenses incurred, the applicants not having submitted any claim in this respect and this not being a matter which the Court had to examine of its own motion (paragraph 70 of the reasons and point 6 of the operative provisions, pp. 36 and 37).

3. In their memorial of 18 January 1988 the applicants had claimed, under Article 50 (art. 50) of the Convention, compensation for prejudice suffered. They contended that an award of exemplary damages would be appropriate and suggested, notably, that compensation should be calculated on the basis of approximately £2,000 for each hour of wrongful detention.

In the principal judgment the Court held that the question of the application of Article 50 (art. 50) in relation to this claim was not ready for decision; accordingly, it reserved the said question in that respect and invited the Government to submit their written comments within the next three months and, in particular, to notify the Court of any agreement reached between them and the applicants (paragraph 71 of the reasons and point 7 of the operative provisions, pp. 36 and 37).

4. In accordance with the foregoing invitation and the President's directions, there were filed at the registry, on 24 February 1989, a memorial of the Government and, on 28 March 1989, observations of the applicants. These documents revealed that no agreement as aforesaid had been reached.

On 14 April the Delegate of the Commission lodged observations on the question of the application of Article 50 (art. 50) in the present case.

5. The Court decided on 25 April 1989 that there was no call to hold a hearing.

AS TO THE LAW

6. Article 50 (art. 50) of the Convention provides as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

In their observations of 28 March 1989, the applicants sought under this provision both compensation for prejudice sustained and - either as a separate item or as a component of such compensation - reimbursement of costs and expenses incurred in the proceedings before the Convention institutions.

A. Costs and expenses

7. The Court has held in the principal judgment that there was no call to examine the application of Article 50 (art. 50) in relation to reimbursement of any costs or expenses incurred (see paragraph 2 (e) above). That decision being final (see Article 52 of the Convention) (art. 52), the Court cannot entertain the applicants' subsequent claim in this respect, on whatever basis it may be put forward.

B. Damage

8. The Government submitted, *inter alia*, that it would be open to the Court to decide that it was not called upon to examine the claim for compensation. In their view, which was contradicted by the applicants, the claim was addressed not to the breaches of Article 5 §§ 3 and 5 (art. 5-3, art. 5-5) found in the principal judgment but to the allegation - which the Court had not upheld - of a breach of Article 5 § 1 (art. 5-1).

9. The Court does not find it necessary to resolve this difference of opinion.

Save for the question of costs, the applicants did not allege any pecuniary damage.

As regards non-pecuniary damage, the Court does not exclude that the applicants may have sustained some prejudice of this kind as a result of the breaches of Article 5 §§ 3 and 5 (art. 5-3, art. 5-5). However, having regard to the circumstances of the case and in particular the reasons leading to the decision recorded in paragraph 2 (a) above, it considers that even in that event the finding in the principal judgment of violations of Article 5 (art. 5) in itself constitutes, as was suggested by the Delegate of the Commission, sufficient just satisfaction for the purposes of Article 50 (art. 50).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that the principal judgment in itself constitutes sufficient just satisfaction for the purposes of Article 50 (art. 50).

Done in English and in French, and notified in writing on 30 May 1989 pursuant to Rule 54 § 2, second sub-paragraph, of the Rules of Court.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar