



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

COURT (CHAMBER)

CASE OF GILLOW v. THE UNITED KINGDOM (ARTICLE 50)

(Application no. 9063/80)

JUDGMENT

STRASBOURG

14 September 1987

In the Gillow case*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. R. RYSSDAL,
Mr. J. CREMONA,
Mr. W. GANSHOF VAN DER MEERSCH,
Mr. F. GÖLCÜKLÜ,
Sir Vincent EVANS,
Mr. C. RUSSO,

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

Having deliberated in private on 22 May and on 24 and 25 August 1987,
Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 19 December 1984. The case originated in an application (no. 9063/80) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission in 1980 by Mr. Joseph and Mrs. Yvonne Gillow, British citizens.

2. By judgment of 24 November 1986, the Court held, *inter alia*, that there had been a breach of Article 8 (art. 8) of the Convention by reason of the way in which the Guernsey Housing Laws were applied in the applicants' case (Series A no. 109, paragraphs 57-58 of the reasons and point 2 of the operative provisions, pp. 23-24 and 29).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. Accordingly, as regards the facts, reference should be made to paragraphs 9-37 of the above-mentioned judgment (*ibid.*, pp. 8-17).

3. The applicants had reserved their position on the application of Article 50 (art. 50) until after having knowledge of the Court's judgment on

* Note by the Registrar: The case is numbered 13/1984/85/132. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

the merits. In these conditions, neither the Government of the United Kingdom ("the Government") nor the Commission were able to take any stand on the issue.

In its judgment of 24 November 1986, the Court accordingly reserved the question, and invited the applicants, duly represented by a lawyer in accordance with Rule 30 of the Rules of Court, to file within the forthcoming three months any claim for just satisfaction that they might have (*ibid.*, paragraph 76 of the reasons and point 6 of the operative provisions, p. 29).

4. Having duly appointed a lawyer, Mr. and Mrs. Gillow, in a memorial of 17 February 1987, claimed just satisfaction in respect of material and moral damage, as well as costs and expenses.

In accordance with the President's directions, the Government filed a memorial on 24 April. On 19 May, the Secretary to the Commission informed the Registrar that its Delegate did not intend to submit any observations.

5. On 22 May 1987, the Chamber decided that, in the particular circumstances, there was no need to hold oral hearings and directed the Registrar to ask the applicants for particulars of the costs and expenses claimed. This information was received on 20 July and 3 August 1987. The Government and the Commission commented thereon on 5 and 21 August 1987, respectively.

6. On 30 June, Mrs. Gillow informed the Court that her husband had died on 8 June 1987.

7. Subsequently, Mr. Cremona, Mr. Ganshof van der Meersch, Mr. Gölcüklü and Mr. Russo, substitute judges, replaced Mr. Thór Vilhjálmsson, Mr. Lagergren, Mr. Pettiti and Mr. Macdonald, who were prevented from taking part in the final deliberation on 24 and 25 August 1987 (Rules 22 § 1 and 24 § 1).

AS TO THE LAW

8. Under Article 50 (art. 50) of the Convention,

"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."

9. Mr. and Mrs. Gillow claimed just satisfaction in respect of both pecuniary and moral damage and costs and expenses.

In addition, throughout the proceedings before the Court, they sought an order directing the Government to restore their "residence qualifications" in

respect of Guernsey. The Court is not, however, empowered under the Convention to make an order of this kind (see, *mutatis mutandis*, the McGoff judgment of 26 October 1984, Series A no. 83, p. 28, § 31).

I. PECUNIARY DAMAGE

10. Mr. and Mrs. Gillow alleged that, as a result of the refusals of permanent and temporary licences (see the above-mentioned Gillow judgment, Series A no. 109, pp. 9-11, §§ 15, 16 and 20), they had been obliged to sell their home "Whiteknights" and, on account of their inferior bargaining position at the time, to accept a price less than the true market value. They further contended that the compensation payable to them should include a sum equal to the difference between the proceeds of sale of "Whiteknights" and what they would have to pay for a replacement property in Guernsey. Under these heads, they claimed a total sum of £50,000. They also sought reimbursement of estate agents' fees on the sale of "Whiteknights" and fees for a house survey, totalling £735.

The Government contested these claims. In their view, the sale in question had not been necessitated by the refusal of licences and, in any event, had been premature in that it was effected prior to the determination of Mrs. Gillow's appeal to the Royal Court (*ibid.*, p. 12, §§ 24-25). Furthermore, the claims in respect of loss on the sale and the costs of a replacement property were imprecise and unsubstantiated by evidence.

11. It is true that the refusal of licences did not oblige the applicants to sell "Whiteknights", for there was nothing to prevent them from letting the property. However, since they were refused a licence to occupy the house themselves, the Court does not consider that they acted unreasonably in deciding to dispose of it. It is therefore appropriate that the above-mentioned fees of £735 should be reimbursed.

As regards the alleged loss on the sale, the Court notes that the applicants obtained a price which fell within the range of the initial valuation made by the estate agents (see paragraph 150 of the Commission's report). It is not established that the price was less than the market value at the time. This claim cannot therefore be accepted.

The claim relating to the costs of a replacement property is likewise unsubstantiated by evidence.

12. The applicants maintained that had they been permitted to continue to live in Guernsey, they would have been able to work there for a further four years, each at a salary of £8,000 a year - Mr. Gillow as a horticultural consultant and Mrs. Gillow as a teacher. They accordingly sought £64,000 for loss of earnings.

The Court agrees with the Government that this claim must be rejected, since there is no evidence establishing that the applicants would have been able to find employment in these capacities in Guernsey at the time.

II. MORAL DAMAGE

13. The applicants claimed £100,000 for "moral damage". In their submission, they had since 1978 sustained substantial prejudice as a result of the Housing Authority's decisions; during this long period, their inability to lead a settled existence had dominated their lives; and the denial of their right to respect for their home and the subsequent prolonged hardship occasioned by the repeated refusals of temporary licences had caused them severe stress and anxiety.

The Government contended that, in the circumstances of the case, the Court's finding of violation of the Convention constituted in itself sufficient just satisfaction under this head. In the alternative, they argued that the sum claimed was disproportionate and suggested a figure of £1,000.

14. In the Court's view, Mr. and Mrs. Gillow undoubtedly sustained significant moral damage which cannot be compensated solely by the finding of a violation. For one year, they lived with a feeling of insecurity, prompted by uncertainty as to whether they would finally be permitted to stay in their home or be expelled from it. Furthermore, their prosecution for unlawful occupation of their home added to their already precarious situation (see the above-mentioned Gillow judgment, Series A no. 109, p. 23, § 57). In the outcome, they felt obliged to dispose of their home in Guernsey and must have experienced considerable stress and anxiety in consequence of that and in settling elsewhere.

15. Taking all the relevant factors into account and making an assessment on an equitable basis, as is required by Article 50 (art. 50), the Court awards the sum of £10,000 under this head.

III. COSTS AND EXPENSES

16. The applicants sought reimbursement of various items of expenditure which they said they had incurred.

The Government pointed out that no vouchers had been supplied in respect of these items and contended that certain of them were either not necessary or not reasonable in amount.

17. The Court has examined the claims under this head in the light of the criteria which emerge from its established case-law (see, amongst other authorities, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 14, § 36).

(a) Miscellaneous expenses

18. The applicants claimed £634 for legal and court costs incurred in Guernsey and for other sundry expenses. These items were not contested by the Government. The Court allows this sum, which it finds reasonable.

(b) Travel and subsistence expenses

19. The applicants sought reimbursement of travel and subsistence expenses relating to:

(i) five visits by them to Strasbourg for consultations with the Secretariat of the Commission and the registry of the Court (£1,950);

(ii) their attendance at the Commission's hearing on 9 December 1982 (£600);

(iii) their attendance at the delivery of the Court's judgment of 24 November 1986 (£600);

(iv) Mr. Dun's services in connection with the Court's hearing on 18 February 1986 (£1,300).

The applicants made no claim in respect of their attendance at the last-mentioned hearing, their expenses on this occasion having been paid by the Council of Europe.

20. No vouchers have been supplied in respect of item (i), but the Court is in any event unable to accept it. The matters discussed in the consultations could have been dealt with by correspondence, with the result that this expenditure cannot be regarded as necessarily incurred.

The same applies to item (iv). Mr. Dun attended the Court's hearing of his own free will and the Court had not been informed in advance of his presence. He acted neither as the representative of the applicants nor as a person approved by the President of the Chamber to assist them (Rule 30 of the Rules of Court).

21. On the other hand, the Court considers that items (ii) and (iii) can be regarded as necessarily incurred. The applicants presented their own case before the Commission and thus obviously had to be present at its hearing. The Court also finds that it was justified for them to attend at the delivery of its 1986 judgment; unlike the applicants in the *Sunday Times* case, on which the Government relied on this point (see the judgment of 6 November 1980, Series A no. 38, p. 16, § 35), Mr. and Mrs. Gillow were still not, at this stage, represented by a lawyer.

The amounts claimed for items (ii) and (iii) appear to the Court to be reasonable, and it therefore allows them both.

(c) Costs relating to the Article 50 (art. 50) proceedings

22. Finally, the applicants claimed £1,000 in respect of the fees of Mr. Bencini, the lawyer who represented them in the Article 50 (art. 50) proceedings. Fees for this purpose were incurred in compliance with the Court's own direction (see the above-mentioned Gillow judgment, Series A no. 109, point 6 (b) of the operative provisions, p. 29). As to quantum, the Court, in view of the limited role played by this lawyer at this final stage of the proceedings, considers £300 (three hundred pounds sterling) to be reasonable.

IV. PAYMENT OF THE AMOUNTS AWARDED

23. Since this case relates to events and their consequences which were experienced by Mr. and Mrs. Gillow together, the Court considers it equitable that all the sums awarded in this judgment should be paid to the survivor of them, Mrs. Gillow.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the United Kingdom is to pay to Mrs. Gillow £10,735 (ten thousand seven hundred and thirty-five pounds) for damage and £2,134 (two thousand one hundred and thirty-four pounds) for costs and expenses;
2. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 14 September 1987 pursuant to Rule 54 § 2, second sub-paragraph, of the Rules of Court.

Gérard WIARDA
President

Marc-André EISSEN
Registrar