

Application No. 20121/92
by Dawn and Stephen O'BRIEN
against the United Kingdom

The European Commission of Human Rights (Second Chamber) sitting in private on 8 September 1993, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO

Mr. K. ROGGE, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 10 April 1992 by Dawn and Stephen O'BRIEN against the United Kingdom and registered on 15 June 1992. under file No. 20121/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicants who are married are British citizens born in 1957 and 1960 respectively and resident in Congleton. They are represented before the Commission by Miss Howell, a solicitor practising in Knutsford. The facts as submitted by the applicants may be summarised as follows.

The applicants have two children, E. born on 10 November 1981 and V. born on 24 February 1983.

On 24 November 1987, police accompanied by social workers from Cheshire County Council (the local authority) arrived at the applicants' home at 7.30 a.m. The children were taken into care under Place of Safety Orders. The applicants were arrested and interviewed by the police with regard to alleged sexual offences in the context of an alleged child pornography ring. Other parents arrested in the same operation were later convicted of sexual offences. The applicants were released after several days and not subsequently charged with any criminal offences.

The applicants applied to the High Court making E. and V. wards of court and seeking their return home.

Pending the proceedings the applicants had access to the children

on two occasions in April and once in June.

The second applicant worked in a National Children's Home with emotionally disturbed children. His contract was terminated when the Home became aware of the allegations against him.

In a report dated 3 June 1988, a Professor in the University of Manchester Department of Psychiatry expressed the view that the local authority acted in clear breach of the guidelines applicable in such cases. He referred, inter alia, to the "sheer weight" of interrogation of the children" and the use of anatomically correct dolls by an inexperienced person in the absence of any indication by the children that abuse had occurred.

The matter came to trial on 10 June 1988 and following a five-day hearing, the judge found that the local authority had not proved a case of sexual abuse and ordered that the children be returned home immediately. In the course of this judgment, the judge criticised the way in which the local authority had conducted their interrogations of the children. He referred to the failure to make contemporaneous notes or a video recording. He awarded costs against the local authority. While he concluded that the children were not at risk in being returned home, he considered difficulties could now arise due to their removal from home for a significant period. He therefore ordered the wardship to continue, with a supervision order of one year.

On 23 November 1989 the applicants introduced an application before the Commission alleging that the actions of the local authority violated their rights under Article 8 of the Convention. The application (No. 16437/89) was declared inadmissible on 7 November 1990 on the ground of non-exhaustion of domestic remedies.

Following counsel's advice, the applicants filed a writ against the local authority in the High Court claiming damages for, inter alia, breach of statutory duty and negligence. In a psychiatric report, it was stated that since their return home the children were inclined to cling to their parents and were afraid that they might be taken away again. It referred to the high level of distress experienced by the whole family and the inevitable long-term residual side-effects.

Following the removal of the children into care, the first applicant began taking amphetamines to which she became addicted. Since her arrest in 1991 on charges of possession of a controlled drug and theft of a handbag (to obtain money to satisfy her habit), she has successfully taken treatment for her addiction. The second applicant has suffered a nervous breakdown requiring treatment at a psychiatric institution and has also been receiving treatment for alcohol dependency. The applicants' marriage has broken down under the strain of their problems and since May 1991 they have been living separately.

The local authority applied to strike out the action on the basis that it disclosed no cause of action.

Following a hearing on 29 April 1992 at which the applicants were represented, the Deputy district judge referred to a recent decision of the Court of Appeal (*F. v. Wirral M.B.C.*, 2 All E. R. 1991) in which it was held that it is impossible to hold that "the common law affords a parent a cause of action against a local authority founded upon the failure by social workers to protect or to avoid injuring a parent's right of, or expectation of, enjoying the company and presence of her child". In light of that decision, he held that he had no alternative but to strike out the applicants' action.

In his opinion dated 8 May 1992, counsel advised the applicants that in view of the Court of Appeal judgment, which had only been fully reported after the commencement of their action, an appeal would be doomed to failure.

COMPLAINTS

The applicants complained that there had been an interference with their right to respect for their private and family life contrary to Article 8 of the Convention. They referred to the traumatic consequences suffered by themselves and the children and the loss of the second applicant's employment and of his self-esteem. They submitted that the decision of the Court of Appeal is in contravention of Article 8 and that damages should be awarded.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 10 April 1992 and registered on 15 June 1992.

On 14 October 1992, the Commission decided to communicate the application to the respondent Government and to ask for written observations on the admissibility and merits of the application.

By letter dated 12 February 1993, the Government informed the Commission that it proposed settling the case on the basis of payment to the applicants of a sum of ex gratia compensation and legal costs. Following negotiation between the parties, the applicants informed the Commission by letter dated 12 August 1993, that they had accepted the Government's offer of £8 000 plus legal costs.

REASONS FOR THE DECISION

The Commission recalls that the applicants have accepted the Government's offer to settle the case and accordingly that they wish to withdraw.

In these circumstances, the Commission finds that the applicants do not intend to pursue their application before the Commission since the matter has been resolved. The Commission further considers that respect for Human Rights as defined in the Convention does not require it to continue the examination of the application.

It follows that the application may be struck off the list of cases pursuant to Article 30 para. 1 (a) of the Convention.

For these reasons, the Commission unanimously

DECIDES TO STRIKE THE APPLICATION OUT OF THE LIST OF CASES.

Secretary to the Second Chamber

President of the Second Chamber

(K. ROGGE)

(S. TRECHSEL)