



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

COURT (CHAMBER)

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

(Application no. 7525/76)

JUDGMENT

STRASBOURG

24 February 1983

In the Dudgeon 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. R. RYSSDAL, President,

Mr. J. CREMONA,

Mr. D. EVRIGENIS,

Mr. F. MATSCHER,

Mr. J. PINHEIRO FARINHA,

Mr. B. WALSH,

Sir Vincent EVANS, *Judges*,

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

Having deliberated in private on 1 October, 23 and 24 November 1982, and on 29 January 1983,

Delivers the following judgment, which was adopted on the last mentioned date, on the application in the present case of Article 50 (art. 50) of the Convention:

PROCEDURE AND FACTS

1. The Dudgeon case was referred to the Court by the European Commission of Human Rights ("the Commission") in July 1980. The case originated in an application against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on 22 May 1976 by a United Kingdom citizen, Mr. Jeffrey Dudgeon.

2. On 30 January 1981, the Chamber constituted to hear the case relinquished jurisdiction in favour of the plenary Court (Rule 48 of the Rules of Court). By judgment of 22 October 1981, the plenary Court held, *inter alia*, that the applicant had been the victim of a breach of Article 8 (art. 8) of the Convention by reason of the existence in Northern Ireland of laws which had the effect of making certain homosexual acts committed in private between consenting adult males criminal offences (Series A no. 45, point 1 of the operative provisions and paragraphs 37-63 of the reasons, pp. 27 and 17-25).

The only outstanding matter to be settled in the present case is the question of the application of Article 50 (art. 50). Accordingly, as regards

* Note by the Registrar: That is, the version of the Rules applicable when proceedings were instituted. A revised version of the Rules of Court entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

the facts the Court will confine itself here to giving the pertinent details; for further particulars, reference should be made to paragraphs 13 to 33 of the above-mentioned judgment (*ibid.*, pp. 7-16).

3. At the hearing held on 23 April 1981, counsel for the applicant had stated that, should the Court find a violation of the Convention, his client would be seeking just satisfaction under Article 50 (art. 50) to obtain financial compensation for damage suffered and for legal and other expenses incurred. The Government of the United Kingdom ("the Government"), for their part, had taken no stand on the matter.

In its judgment of 22 October 1981, the Court reserved the whole of the question of the application of Article 50 (art. 50) and referred it back to the Chamber under Rule 50 § 4 of the Rules of Court. On the same day, the Chamber invited the Commission to submit, within the coming two months, written observations thereon, including notification of any friendly settlement at which the Government and the applicant might have arrived (*ibid.*, p. 48).

4. Following two extensions by the President of the Chamber of the above-mentioned time-limit and in accordance with his orders and directions, the following documents were filed at the registry:

- on 17 May 1982, the observations of the Delegates of the Commission, appended to which were, *inter alia*, details of the applicant's claim;
- on 6 August 1982, a memorial from the Government;
- on 15 September 1982, the reply of the Delegates to a question raised therein by the Government;
- on 15 October 1982, through the Secretary to the Commission, the observations of the applicant on the above-mentioned memorial of the Government;
- on 15 November 1982, the comments of the Government on the latter observations.

On 8 November 1982 and 11 January 1983, the Secretariat of the Commission transmitted to the Registrar further observations by Mr. Dudgeon, which the latter had sent to the Commission on his own initiative.

These various documents revealed that it had not been possible to arrive at a friendly settlement. The Delegates did not comment on the merits of the applicant's claim, which may be summarised as follows:

- for damage suffered as a result of the police investigation carried out in 1976, financial compensation of £5,000;
- for damage suffered by reason of the very existence of the legislation successfully complained of, financial compensation of £10,000 and a declaration by the Government that if Mr. Dudgeon were to apply for civil service employment he would not be discriminated against either on grounds of homosexuality or for having lodged his petition with the Commission;
- reimbursement of costs itemised at £4,655.

Further particulars of the claim are set out below in the section "As to the law".

5. Following the Court's judgment of 22 October 1981 and on the initiative of the Government, an Order in Council, entitled the Homosexual Offences (Northern Ireland) Order 1982, was made. Subject to certain exceptions concerning mental patients, members of the armed forces and merchant seamen, the effect of this Order, which came into force on 9 December 1982, is to "decriminalise" in Northern Ireland homosexual acts committed in private between two consenting males aged 21 years and over. The Order brings the relevant law in Northern Ireland into line with that applying in the remainder of the United Kingdom (see the above-mentioned judgment of 22 October 1981, pp. 9-10, §§ 16-18).

6. Having consulted, through the Registrar, the Agent of the Government and the Delegates of the Commission, the Chamber decided on 1 October 1982 that there was no call to hold hearings.

7. Mr. J. Cremona, Mr. F. Matscher and Mr. B. Walsh, substitute judges, took the place of Mr. Thór Vilhjálmsson, Mr. G. Lagergren and Mr. L. Liesch, who were prevented from taking part in the further consideration of the case (Rules 22 § 1 and 24 § 1 of the Rules of Court).

AS TO THE LAW

8. Article 50 (art. 50) of the Convention provides:

"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 present 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. The applicant claimed just satisfaction for damage allegedly caused to him by the very existence of the impugned legislation and also by the police investigation carried out in his respect in 1976, and for legal and other expenses incurred. The various items will be examined separately.

I. DAMAGE ALLEGEDLY CAUSED BY THE VERY EXISTENCE OF THE IMPUGNED LEGISLATION

10. The applicant alleged that as a consequence of the laws found by the Court to be in breach of Article 8 (art. 8) of the Convention, he had suffered "considerable damage over many years" in the form of

- psychological damage,
- prejudice to his relationships with his family and society,

- non-fulfilment of personal potential,
- injury to reputation, and
- loss of earning capacity.

The applicant put forward £10,000 as a suitable figure for compensation.

The Government questioned the extent to which the prejudice alleged could be said to derive from the existence of the impugned legislation; they suggested that many of the difficulties elaborated in the applicant's submissions derive from society's disapproval of homosexuality rather than from the existence of the laws in question. As their main submission, they invited the Court to find that its judgment of 22 October 1981 itself afforded sufficient just satisfaction for the applicant, without the need for monetary compensation. In the alternative, they contended that the figure of £10,000 was excessive in the circumstances.

11. The existence of the laws in question undoubtedly caused the applicant at least some degree of fear and psychological distress; this is clear from the grounds on which the Court found a breach of Article 8 (art. 8) (see pp. 17, 18 and 24, §§ 37, 40, 41 and 60 of the above-mentioned judgment of 22 October 1981, Series A no. 45).

However, just satisfaction is to be afforded only "if necessary", and the matter falls to be determined by the Court at its discretion, having regard to what is equitable (see the Sunday Times judgment of 6 November 1980, Series A no. 38, p. 9, § 15 in fine).

12. The unjustified interference with Mr. Dudgeon's right to respect for his private life resided in "the maintenance in force of the impugned legislation in so far as it ha[d] the general effect of criminalising private homosexual relations between adult males capable of valid consent" (Series A no. 45, p. 24, § 61). The Government inferred from the judgment of 22 October 1981 that the laws in question cannot be said always to have been in breach of the Convention, but rather became out of step with changing standards of respect for private life under Article 8 (art. 8). Paragraph 60, on which the Government relied, does indeed support their contention (*ibid.*, pp. 23-24).

Following the Court's earlier judgment, an Order in Council has been made bringing the law of Northern Ireland into line with that of the remainder of the United Kingdom (see paragraph 5 above).

13. The applicant did not accept that the designated age of 21 years in the new legislation fully satisfied his claim under Article 8 (art. 8). However, within the framework of the procedure concerning the application of Article 50 (art. 50), the task of the Court is limited to giving a ruling on the just satisfaction, if any, to be afforded on the basis of its decision on the substantive issues of the case.

14. Subject to the question of the age of consent, Mr. Dudgeon should be regarded as having achieved his objective of securing a change in the law of Northern Ireland. This being so and having regard to the nature of the

breach found, the Court considers that in relation to this head of claim the judgment of 22 October 1981 constitutes in itself adequate just satisfaction for the purposes of Article 50 (art. 50), without it being "necessary" to afford financial compensation (see, for example, *mutatis mutandis*, the *Le Compte, Van Leuven and De Meyere* judgment of 18 October 1982, Series A no. 54, p. 8, § 16).

15. In addition to financial compensation, the applicant initially sought a formal declaration from the Government that if he were to apply for civil service employment in Northern Ireland he would not be discriminated against either on grounds of homosexuality or for having lodged his petition with the Commission. Subsequent to making this submission, he was appointed to a post in the Northern Ireland civil service. He nevertheless maintained his request, believing it to be "not unreasonable in the light of the currently precarious economic situation in the United Kingdom as a whole and Northern Ireland in particular".

The Court is not empowered under the Convention to direct a Contracting State to make a declaration of the kind requested by the applicant (see, for example, *mutatis mutandis*, the above-mentioned *Le Compte, Van Leuven and De Meyere* judgment, Series A no. 54, p. 7, § 13).

II. DAMAGE ALLEGEDLY CAUSED BY THE POLICE INVESTIGATION

16. The applicant alleged that the police investigation carried out in regard to him in 1976 (see the judgment of 22 October 1981, Series A no. 45, p. 15, § 33) had caused him distress, suffering, anxiety and inconvenience. He put forward £5,000 as a suitable figure for compensation.

As their main submission, the Government invited the Court to find that, under this head also, the judgment of 22 October 1981 provided sufficient just satisfaction. In the alternative, they contended that the figure of £5,000 was excessive.

17. As a consequence of the existence of the impugned legislation, the police had a duty to investigate the possible commission of offences. There has been no suggestion that in the instant case the police acted at all illegally under domestic law. Furthermore, Mr. Dudgeon, being under no legal constraint, could have refused their request to accompany them to the police station. The Court does not therefore accept the applicant's contention that his position was analogous to that of persons wrongfully detained.

Nonetheless, the questioning of the applicant about the commission by him of illegal homosexual acts in private with other males aged over 21 years, together with the seizure of his private papers, constituted an intrusion into his private life. It follows from the Court's judgment of 22 October 1981 that this intrusion was unjustified in terms of Article 8 (art. 8)

of the Convention. In addition, he was confronted for more than a year with the prospect of a criminal prosecution.

The Court is thus satisfied that at least some degree of distress, suffering, anxiety and inconvenience as alleged was sustained.

18. The police investigation carried out in 1976 was, however, simply a specific measure of implementation under the laws allowing this kind of intrusion into the applicant's private life; its significance lay in showing that the threat hanging over him was real (*ibid.*, p. 19, § 41 in fine). The judgment of 22 October 1981 has prompted an amendment of the laws in question (see paragraph 5 above) and, in holding there to have been a breach of Article 8 (art. 8), afforded Mr. Dudgeon adequate just satisfaction for the damage caused by their existence (see paragraph 14 above). In the particular circumstances, the additional element of prejudice suffered as a consequence of the police investigation is not such as to call for further compensation by way of just satisfaction.

III. COSTS

19. The applicant has claimed a total of £4,655 for legal and other expenses referable to the proceedings before the Commission and the Court.

A. Introduction

20. Costs and expenses are recoverable under Article 50 (art. 50) provided that they were incurred by the injured party in order to seek, through the domestic legal order, prevention or rectification of a violation, to have the same established by the Commission and later by the Court or to obtain redress therefore (see, *inter alia*, the Neumeister judgment of 7 May 1974, Series A no. 17, pp. 20-21, § 43). Furthermore, it has to be established that the costs and expenses were actually incurred, were necessarily incurred and were also reasonable as to quantum (see, *inter alia*, the above-mentioned Sunday Times judgment, Series A no. 38, pp. 13-18, §§ 23-42).

21. In the submission of the Government, in so far as certain items of costs were in fact settled by the Northern Ireland Gay Rights Association ("NIGRA"), those costs are not recoverable since they were not actually incurred by the applicant himself.

The Court does not agree with this line of argument. As Mr. Dudgeon pointed out and subject to the immediately following paragraph, the legal costs of his case were incurred by him in the sense that he, as client, made himself legally liable to pay his lawyers on an agreed basis. The wholly private arrangements he made to cover his financial obligations to his lawyers are not material for the purposes of Article 50 (art. 50). Such private arrangements are to be distinguished from the situation where, the lawyer having accepted to act on the basis of receiving only the fees granted

by the Commission under its legal aid scheme, the applicant in question never was under any liability to pay any or any additional fees (see the addendum to the Commission's Rules of Procedure and the Luedicke, Belkacem and Koç judgment of 10 March 1980, Series A no. 36, p. 8, § 15). Similar reasoning applies to the other costs claimed.

B. Legal costs

1. Before the Commission

22. The applicant claimed £1,805 in respect of professional services rendered by his then legal advisers prior to the grant of legal aid by the Commission, which was effective only as from the date of the admissibility decision (3 March 1978).

Of this sum, fees amounting to £1,290 were paid by agreement on a contingency basis, that is to say, they became payable only if the application was declared admissible. Under the domestic law of Northern Ireland, an agreement to charge legal fees for contentious business on a contingency basis would be unenforceable against the client. Accordingly, Mr. Dudgeon was not under any legal liability to pay these fees; nor, since they were settled on his behalf by NIGRA, did he in fact pay them. This being so, he cannot be said in any sense actually to have incurred these fees.

With regard to the remaining items, the Court has no cause to doubt that they were actually incurred, necessarily incurred and reasonable as to quantum.

To sum up, under this head the Court awards £515.

2. Before the Court

23. The applicant claimed reimbursement of fees of £500 for junior counsel and £1,150 for senior counsel at the merits stage, and £460 for junior counsel at the Article 50 (art. 50) stage. The first two items claimed were, by agreement, charged in addition to the total sum of FF. 11,835.92 granted by the Commission as legal aid; no legal aid payment was made in regard to the proceedings concerning the application of Article 50 (art. 50).

24. Neither the Commission nor, except as indicated above (at paragraph 21), the Government suggested that the applicant had incurred no liability for costs over and above those covered by legal aid (cf., inter alia, the Airey judgment of 6 February 1981, Series A no. 41, p. 9, § 13).

In the circumstances, the Court has no cause to doubt that the fees claimed were actually incurred, necessarily incurred and reasonable as to quantum. On the latter point, it is to be noted that the sum of FF. 11,835.92 mentioned above included FF. 10,135.92 for expenses and disbursements,

as compared with FF. 1,700 only for lawyers' fees as such, and that the solicitor instructed by the applicant acted without fee.

C. Administrative costs

25. A sum of £150, additional to the FF 230 received in legal aid from the Commission for out-of-pocket expenses, was sought for photocopying, postal and telephone costs in connection with preparing the hearing before the Court and the submissions under Article 50 (art. 50).

In the circumstances, the Court has no cause to doubt that the supplementary expenses were actually incurred, necessarily incurred and reasonable as to quantum.

D. Other costs

26. Under this head, the applicant claimed firstly £540 in respect of travel and accommodation expenses incurred in attending four conferences in London with his legal advisers. The Government did not challenge the necessity of attending three conferences and accordingly stated their willingness to bear the related expenses provided that these expenses had in fact been paid by the applicant himself and not by NIGRA (as to which, see paragraph 21 above).

In the circumstances, the Court has no cause to doubt that the full costs claimed were actually incurred, necessarily incurred and reasonable as to quantum.

27. Finally, a sum of £50 was claimed for the travel and accommodation expenses of an expert who came to Strasbourg at the applicant's instance for the hearing on 23 April 1981.

The applicant's request for the expert in question to be heard as a witness was submitted at short notice before the hearing and was supported by neither the Commission nor the Government. The Court did not accede to the proposal made, but even if it had done so it could have taken evidence from the expert at a subsequent date either at a hearing before the full Court (Rule 38 § 1 read with Rule 48 § 3) or through one of its members deputed for that purpose (Rule 38 § 2 read with Rule 48 § 3). The expert's presence in Strasbourg on 23 April 1981 was thus not essential and the attendant costs cannot be regarded as having been necessarily incurred.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares inadmissible the claim for just satisfaction in so far as it seeks an order for a declaration by the United Kingdom;

2. Holds that the United Kingdom is to pay to the applicant, in respect of costs and expenses incurred, the sum of three thousand three hundred and fifteen pounds sterling (£3,315);
3. Rejects the remainder of the claim.

Done in English and in French, the English text being authentic, at the Human Rights Building, Strasbourg, this twenty-fourth day of February, one thousand nine hundred and eighty-three.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar