



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

CASE OF A. v. THE UNITED KINGDOM

(100/1997/884/1096)

JUDGMENT

STRASBOURG

23 September 1998

In the case of A. v. the United Kingdom¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mrs E. PALM,

Sir John FREELAND,

Mr P. KÜRIS,

Mr J. CASADEVALL,

Mr P. VAN DIJK,

Mr V. TOUMANOV,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 27 June and 26 August 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 27 October 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 25599/94) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under Article 25 by a British national, “A.”, on 15 July 1994. The applicant asked the Court not to reveal his identity.

The Commission’s request referred to Articles 44 and 48 and the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46). The object of the

Notes by the Registrar

1. The case is numbered 100/1997/884/1096. 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.

2. Rules of Court A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 3, 8, 13 and 14 of the Convention.

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyers who would represent him (Rule 30).

3. The Chamber to be constituted included *ex officio* Sir John Freeland, the elected judge of British nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 28 November 1997, in the presence of the Registrar, Mr Ryssdal drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr C. Russo, Mrs E. Palm, Mr J. Makarczyk, Mr P. Kūris, Mr J. Casadevall and Mr V. Toumanov (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently Mr R. Bernhardt, who had been elected President of the Court, replaced Mr Ryssdal, who had died (Rule 21 § 6, second subparagraph).

4. As President of the Chamber at that time (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, had consulted the Agent of the United Kingdom Government (“the Government”), the applicant’s lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 § 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant’s and the Government’s memorials on 27 February and 4 March 1998 respectively.

5. Mr Makarczyk was unable to take part in the further consideration of the case and was therefore replaced by Mr P. van Dijk, substitute judge (Rules 22 § 1 and 24 § 1).

6. In accordance with the President’s decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 June 1998. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr M. EATON, Foreign and Commonwealth Office,	<i>Agent,</i>
Mr D. PANNICK QC, Barrister-at-Law,	
Mr M. SHAW, Barrister-at-Law,	<i>Counsel,</i>
Ms S. RYAN, Department of Health,	
Ms C. RICCARDI, Department of Health,	<i>Advisers;</i>

(b) *for the Commission*

Mr N. BRATZA,	<i>Delegate;</i>
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(c) *for the applicant*

Mr A. LEVY QC, Barrister-at-Law,
Mr T. EICKE, Barrister-at-Law,
Mr M. GARDNER,
Mr P. NEWELL,

*Counsel,
Solicitor,
Adviser.*

The Court heard addresses by Mr Bratza, Mr Levy and Mr Pannick.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a British citizen, born in 1984.

In May 1990 he and his brother were placed on the local child protection register because of “known physical abuse”. The cohabitant of the boys’ mother was given a police caution after he admitted hitting A. with a cane. Both boys were removed from the child protection register in November 1991. The cohabitant subsequently married the applicant’s mother and became his stepfather.

8. In February 1993, the head teacher at A.’s school reported to the local Social Services Department that A.’s brother had disclosed that A. was being hit with a stick by his stepfather. The stepfather was arrested on 5 February 1993 and released on bail the next day.

9. On 5 February 1993 the applicant was examined by a consultant paediatrician, who found the following marks on his body, *inter alia*: (1) a fresh red linear bruise on the back of the right thigh, consistent with a blow from a garden cane, probably within the preceding twenty-four hours; (2) a double linear bruise on the back of the left calf, consistent with two separate blows given some time before the first injury; (3) two lines on the back of the left thigh, probably caused by two blows inflicted one or two days previously; (4) three linear bruises on the right bottom, consistent with three blows, possibly given at different times and up to one week old; (5) a fading linear bruise, probably several days old.

The paediatrician considered that the bruising was consistent with the use of a garden cane applied with considerable force on more than one occasion.

10. The stepfather was charged with assault occasioning actual bodily harm and tried in February 1994. It was not disputed by the defence that the stepfather had caned the boy on a number of occasions, but it was argued that this had been necessary and reasonable since A. was a difficult boy who did not respond to parental or school discipline.

In summing up, the judge advised the jury on the law as follows:

“... What is it the prosecution must prove? If a man deliberately and unjustifiably hits another and causes some bodily injury, bruising or swelling will do, he is guilty of actual bodily harm. What does ‘unjustifiably’ mean in the context of this case? It is a perfectly good defence that the alleged assault was merely the correcting of a child by its parent, in this case the stepfather, provided that the correction be moderate in the manner, the instrument and the quantity of it. Or, put another way, reasonable. It is not for the defendant to prove it was lawful correction. It is for the prosecution to prove it was not.

This case is not about whether you should punish a very difficult boy. It is about whether what was done here was reasonable or not and you must judge that...”

11. The jury found by a majority verdict that the applicant’s stepfather was not guilty of assault occasioning actual bodily harm.

II. RELEVANT DOMESTIC LAW

A. Criminal sanctions against the assault of children

12. The applicant’s stepfather was charged with “assault occasioning actual bodily harm” contrary to section 47 of the Offences against the Person Act 1861, as amended. An “assault”, for the purposes of this section, includes an act by which a person intentionally or recklessly inflicts personal violence upon another. “Actual bodily harm” includes any hurt or injury calculated to interfere with the health or comfort of the victim; the hurt or injury need not be permanent but must be more than transitory or trifling. The maximum penalty on conviction is five years’ imprisonment.

13. In addition, it is an offence under section 1(1) of the Children and Young Persons Act 1933 to assault or ill-treat a child in a manner likely to cause him unnecessary suffering or injury to health. The maximum penalty on conviction is ten years’ imprisonment.

14. In criminal proceedings for the assault of a child, the burden of proof is on the prosecution to satisfy the jury, beyond a reasonable doubt, *inter alia* that the assault did not constitute lawful punishment.

Parents or other persons *in loco parentis* are protected by the law if they administer punishment which is moderate and reasonable in the circumstances. The concept of “reasonableness” permits the courts to apply standards prevailing in contemporary society with regard to the physical punishment of children.

Corporal punishment of a child by a teacher cannot be justified if the punishment is inhuman or degrading. In determining whether punishment is inhuman or degrading, regard is to be had to “all the circumstances of the case, including the reason for giving it, how soon after the event it is given, its nature, the manner and circumstances in which it is given, the persons involved and its mental and physical effects” (section 47(1)(a) and (b) of the Education (no. 2) Act 1986, as amended by section 293 of the Education Act 1993).

B. Civil remedies for assault

15. Physical assault is actionable as a form of trespass to the person, giving the aggrieved party the right to recovery of damages. In civil proceedings for assault, whilst the elements of the tort are the same as those of the criminal offence, the burden of proof of establishing that punishment was reasonable is on the defendant, on the balance of probabilities.

PROCEEDINGS BEFORE THE COMMISSION

16. A. applied to the Commission on 15 July 1994. He complained that the State had failed to protect him from ill-treatment by his step-father, in violation of Articles 3 and/or 8 of the Convention; that he had been denied a remedy for these complaints in violation of Article 13; and that the domestic law on assault discriminated against children, in violation of Article 14 in conjunction with Articles 3 and 8.

17. The Commission declared the application (no. 25599/94) admissible on 9 September 1996. In its report of 18 September 1997 (Article 31), it expressed the opinion that there had been a violation of Article 3 (unanimously); that it was not necessary to consider the complaint under Article 8 (sixteen votes to one); that there had been no violation of Article 13 (unanimously) and that it was not necessary to consider the

complaint under Article 14 in conjunction with Articles 3 and 8 of the Convention. The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

18. In their memorial and at the hearing, the Government accepted the reasoning and the conclusion of the Commission that there had been a violation of Article 3. However, they asked the Court to confine itself to considering the facts of the case without making any general statement about the corporal punishment of children.

The applicant asked the Court to find violations of Articles 3 and 8 of the Convention and to confirm that national law should not condone directly or by implication any level of deliberate violence to children.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

19. The applicant asked the Court to find a violation of Article 3 of the Convention, which provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Both the Commission and the Government accepted that there had been a violation of Article 3. Despite this, the Court considers it necessary to examine itself the issues in this case (see, for example, the *Findlay v. the United Kingdom* judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 263). As is its usual practice, the Court will limit examination to the specific facts of the case before it.

20. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

effects and, in some instances, the sex, age and state of health of the victim (see the Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, p. 59, § 30).

21. The Court recalls that the applicant, who was then nine years old, was found by the consultant paediatrician who examined him to have been beaten with a garden cane which had been applied with considerable force on more than one occasion (see paragraph 9 above).

The Court considers that treatment of this kind reaches the level of severity prohibited by Article 3.

22. It remains to be determined whether the State should be held responsible, under Article 3, for the beating of the applicant by his stepfather.

The Court considers that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (see, *mutatis mutandis*, the H.L.R. v. France judgment of 29 April 1997, *Reports* 1997-III, p. 758, § 40). Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity (see, *mutatis mutandis*, the X and Y v. the Netherlands judgment of 26 March 1985, Series A no. 91, pp. 11–13, §§ 21–27; the Stubbings and Others v. the United Kingdom judgment of 22 October 1996, *Reports* 1996-IV, p. 1505, §§ 62–64; and also the United Nations Convention on the Rights of the Child, Articles 19 and 37).

23. The Court recalls that under English law it is a defence to a charge of assault on a child that the treatment in question amounted to “reasonable chastisement” (see paragraph 14 above). The burden of proof is on the prosecution to establish beyond reasonable doubt that the assault went beyond the limits of lawful punishment. In the present case, despite the fact that the applicant had been subjected to treatment of sufficient severity to fall within the scope of Article 3, the jury acquitted his stepfather, who had administered the treatment (see paragraphs 10–11 above).

24. In the Court’s view, the law did not provide adequate protection to the applicant against treatment or punishment contrary to Article 3. Indeed, the Government have accepted that this law currently fails to provide adequate protection to children and should be amended.

In the circumstances of the present case, the failure to provide adequate protection constitutes a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

25. Article 8 of the Convention provides as follows:

“1. Everyone has the right to respect for his private ... 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 national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

26. The Commission concluded that, given its finding of a violation of Article 3, it was not necessary to consider the issues under Article 8. The Government asked the Court also to take this approach.

27. In his memorial to the Court, the applicant submitted that, if the Court were to find a violation of Article 3, he would not pursue his complaint under Article 8. However, at the hearing before the Court, he contended that, in the light of the Government’s memorial and their proposals for legislative change, it was necessary for the Court to rule under Article 8 in order to provide guidance to the Government and protection for children against all forms of deliberate violence.

28. The Court recalls that it has found a violation of Article 3 in the present case. In these circumstances it is not necessary to examine whether the inadequacy of the legal protection provided to A. against the ill-treatment that he suffered also breached his right to respect for private life under Article 8.

III. ALLEGED VIOLATIONS OF ARTICLES 13 AND 14 OF THE CONVENTION

29. The applicant accepted the Commission’s finding of no violation of Article 13 of the Convention and did not pursue his complaint under Article 14 of the Convention taken in conjunction with Articles 3 and/or 8.

30. In these circumstances, it is not necessary for the Court to consider these complaints.

IV. APPLICATION OF ARTICLE 50 OF THE CONVENTION

31. The applicant claimed just satisfaction under Article 50 of the Convention, which 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 ... 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.”

A. Non-pecuniary damage

32. The applicant sought compensation for the grave physical abuse which he had suffered at the hands of his stepfather. He pointed out that, because of the inadequacy of English law, he had also had to endure the trauma of criminal proceedings which resulted in the acquittal of his stepfather. At the hearing before the Court, his representative suggested that 15,000 pounds sterling (GBP) would be an appropriate sum by way of compensation.

33. Prior to the hearing before the Court, the Government had informed the applicant that they accepted the Commission's finding of violation of Article 3 and undertook to amend domestic law. In addition, they had offered the applicant an *ex gratia* payment of GBP 10,000. At the hearing before the Court, however, they submitted that, in the light of their undertaking to amend the law, a finding of a breach would be adequate just satisfaction.

34. The Court considers that, in the circumstances of the case, the applicant should be awarded GBP 10,000 in respect of compensation for non-pecuniary damage.

B. Costs and expenses

35. The applicant claimed legal costs and expenses totalling GBP 48,450.

36. The Government submitted that, in view of their admission of a violation of Article 3 and offer of settlement, the applicant should not receive any legal costs in respect of the proceedings before the Court. In any event, they considered that the hourly rates charged by his representatives and the number of hours charged were excessive and should be reduced.

37. In view of the limited number of issues raised by the case and the absence of any detailed breakdown of the costs claimed, the Court considers the sum requested by the applicant to be excessive (see, for example, the *Coyne v. the United Kingdom* judgment of 24 September 1997, *Reports* 1997-V, p. 1856, § 66). Making its assessment on an equitable basis, it awards GBP 20,000 in respect of costs and expenses, less the amounts received by way of legal aid from the Council of Europe, but together with any value-added tax which may be payable.

C. Default interest

38. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention;
2. *Holds* that it is not necessary to consider the applicant's complaints under Articles 8, 13 or 14 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, in respect of non-pecuniary damage, 10,000 (ten thousand) pounds sterling;
 - (b) that the respondent State is to pay the applicant, within three months, in respect of costs and expenses, 20,000 (twenty thousand) pounds sterling, less 35,264 (thirty-five thousand two hundred and sixty-four) French francs to be converted into pounds sterling at the rate applicable on the date of delivery of the present judgment, together with any value-added tax which may be payable;
 - (c) that simple interest at an annual rate of 7.5% shall be payable on those sums from the expiry of the above-mentioned three months until settlement.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar