



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

COURT (CHAMBER)

**CASE OF YOUNG, JAMES AND WEBSTER v. THE UNITED
KINGDOM (ARTICLE 50)**

(Application no. 7601/76; 7806/77)

JUDGMENT

STRASBOURG

18 October 1982

In the case of Young, James and Webster,

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. Thór VILHJÁLMSSON,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. F. GÖLCÜKLÜ,
Sir Vincent EVANS,

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

Having deliberated in private on 1 October 1982,

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

PROCEDURE AND FACTS

1. The case of Young, James and Webster was referred to the Court by the European Commission of Human Rights ("the Commission") in May 1980. The case originated in two applications against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission in 1976 and 1977 by Mr. Ian McLean Young, Mr. Noël Henry James and Mr. Ronald Roger Webster.

2. On 25 November 1980, the Chamber constituted to examine the case relinquished jurisdiction in favour of the plenary Court (Rule 48 of the Rules of Court). By a judgment of 13 August 1981, the latter held, *inter alia*, that the applicants' dismissal from employment for failure to join a specified trade union had entailed a breach of Article 11 (art. 11) of the Convention (Series A no. 44, point 1 of the operative provisions and paragraphs 50-65 of the reasons, pp. 27 and 21-26).

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, the Court will confine itself here to giving the pertinent

* In this volume, the Rules of Court referred to are those in force at the time proceedings were instituted. These Rules have since been replaced by a revised text that came into operation on 1 January 1983, but only in respect of cases brought before the Court after that date.

details; for further particulars, reference should be made to paragraphs 12 to 44 of the above-mentioned judgment (*ibid.*, pp. 8-18).

3. At the hearings of 3 and 4 March 1981, counsel for the applicants had indicated that, should the Court find a violation, his clients would seek just satisfaction under Article 50 (art. 50) in respect of material losses, legal costs and allied expenses, and non-material damages.

In its judgment of 13 August 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 next two months, its written observations on the said question, including notification of any friendly settlement at which the Government of the United Kingdom ("the Government") and the applicants might have arrived (*ibid.*, p. 33).

4. Following several extensions by the President of the Chamber of the above-mentioned time-limit and in accordance with his Orders and directions, the registry received

- on 13 April 1982, observations of the Delegate of the Commission concerned with the issue under Article 50 (art. 50);
- on 24 June and 21 September 1982, through the Secretary to the Commission, observations of the applicants;
- on 15 May and 4 August 1982, comments of the Government and their replies to questions put to them by the Court.

These documents revealed that no friendly settlement of the applicants' claims had been arrived at; they gave details of negotiations conducted to this end, with the assistance of the Commission, between the Government and the applicants, of an offer made by the Government on 17 March 1982 and of the applicants' views thereon.

5. In his observations, the Commission's Delegate submitted that just satisfaction should be afforded in the form of payments by the Government to the applicants, on the terms which he mentioned, of the same total amount as that offered by the Government during the negotiations, namely £145,917 less certain sums already received by the applicants from the Government by way of payments on account in respect of pecuniary losses and from the Commission by way of legal aid.

For ease of reference, further particulars concerning the applicants' claims and the Government's offer are set out below in the section "As to the law".

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

7. Mr. F. Gölcüklü, a substitute judge, took the place of Mr. G. Lagergren, who was prevented from taking part in the consideration of the case (Rules 22-1 and 24-1 of the Rules of Court).

AS TO THE LAW

I. INTRODUCTION

8. Article 50 (art. 50) of the Convention reads 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 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."

The applicability of this Article (art. 50) was not contested in the present case.

9. The applicants claimed just satisfaction in respect of pecuniary losses, non-pecuniary loss and legal costs. The various items will be examined separately.

II. PECUNIARY LOSSES

10. Mr. Young claimed £9,505 for past earnings, £10,203 for pension rights and £5,000 for travel privileges, lost as a result of his dismissal from employment, together with interest on the earnings. During the course of the settlement negotiations, the Government offered to pay to him £4,500, £3,500 and £3,200 for the quantified items and £6,426 by way of interest on certain of the amounts involved.

Mr. James claimed £11,714 for past earnings, £42,566 for future earnings and pension rights and £3,000 for travel privileges, lost as a result of his dismissal from employment, together with interest on the past earnings. During the course of the settlement negotiations, the Government offered to pay to him £11,714, £18,568 and £7,800 for the quantified items and £7,133 by way of interest on certain of the amounts involved.

Mr. Webster claimed £3,731 for past earnings and pension rights and £3,183 for travel privileges, lost as a result of his dismissal from employment, together with interest on the earnings. During the course of the settlement negotiations, the Government offered to pay to him £3,731 and £3,183 for the quantified items and £1,162 by way of interest on certain of the amounts involved. They made no offer with regard to an additional claim of £6,200 for personal expenses.

11. In his observations filed with the registry, Mr. Webster did not advert expressly to the last-mentioned claim, which is unsupported by any evidence of necessary out-of-pocket expenses. In so far as it relates to time devoted to this case, the Court does not find it necessary in the circumstances to afford just satisfaction in respect of this item.

As regards the remaining items, there is no dispute that, as a direct result of their dismissal, the applicants did suffer losses of the kind mentioned in paragraph 10 above. In the cases of Mr. Young and Mr. James, but not of Mr. Webster, there are differences between their claims and the Government's offer. However, they relate only to quantum.

In the observations filed on 24 June 1982, Mr. Young stated that he was "reasonably satisfied" with the Government's offer in respect of pecuniary losses. It appears from a letter of 1 June 1982 from Mr. James to his solicitors, a copy of which was forwarded to the Court, that he did not lay stress on the differences in question. The Court notes that, in any event, claims in respect of future earnings must be based on assumptions and are to that extent uncertain.

In these circumstances, the Court, like the Commission's Delegate, considers that the applicants should be afforded just satisfaction in respect of pecuniary losses as follows: Mr. Young - £17,626; Mr. James - £45,215; Mr. Webster - £8,076.

III. NON-PECUNIARY LOSS

12. Each of the applicants claimed, for non-pecuniary loss or moral damage occasioned by their dismissals, compensation "upon such terms as the Court deems just and equitable". They cited such matters as the harassment and humiliation to which they had been subjected, stress and anxiety compounded by the difficulties encountered in obtaining other employment and, especially in the case of Mr. James, financial problems and deterioration of the way of life and of the health of themselves and their families.

During the course of the settlement negotiations, the Government offered to pay £2,000 to Mr. Young, £6,000 to Mr. James and £2,000 to Mr. Webster under this head. In the observations filed with the Court, each of the applicants indicated that he considered this offer inadequate.

13. It was not disputed by the Government that the applicants' dismissals did occasion damage of the kind to which they have referred. The various elements do not lend themselves to a process of calculation; taking them together, the Court considers that it is equitable to afford the applicants, having regard to their different circumstances, just satisfaction in respect of non-pecuniary loss as follows: Mr. Young - £2,000; Mr. James - £6,000; Mr. Webster - £3,000.

IV. LEGAL COSTS

14. The applicants claimed in respect of legal costs and expenses referable to the proceedings before the Convention institutions £64,241.16 and 342,349 FF, representing the fees and disbursements of a London firm

of solicitors, Messrs. Trower, Still & Keeling, and of a Paris law firm, Messrs. Bodington & Yturbe; in each case the disbursements included fees paid to counsel.

During the course of the settlement negotiations, the Government offered to pay to the applicants, in full and final satisfaction of their claims under this head, a global sum of £65,000. In the observations filed with the Court, the applicants maintained their claims in full.

15. According to the Court's case-law, costs and expenses will not be awarded under Article 50 (art. 50) unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see, *inter alia*, the Sunday Times judgment of 6 November 1980, Series A no. 38, p. 13, § 23).

In this latter respect, the Court observes that high costs of litigation may themselves constitute a serious impediment to the effective protection of human rights. It would be wrong for the Court to give encouragement to such a situation in its decisions awarding costs under Article 50 (art. 50). It is important that applicants should not encounter undue financial difficulties in bringing complaints under the Convention and the Court considers that it may expect that lawyers in Contracting States will co-operate to this end in the fixing of their fees.

16. Each of the applicants had the benefit of free legal aid before the Commission and then, after reference of the case to the Court, in his relations with the Commission's Delegates. According to the documents before the Court, the applicants also had assistance from the Freedom Association, which organisation either paid or underwrote the legal costs referable to the proceedings before the Convention institutions.

Neither the Government nor the Commission suggested that the applicants had incurred no liability whatsoever for costs additional to those covered by their legal aid (*cf.*, *inter alia*, the Airey judgment of 6 February 1981, Series A no. 41, p. 9, § 13).

The difference between the applicants' claim and the Government's offer suggests that the Government considered that some of the costs were not necessarily incurred or reasonable as to quantum. It is at least debatable whether, bearing in mind that the applicants had the services of counsel, they also required the services of both a firm of solicitors in London and a law firm in Paris.

During the settlement negotiations, the Government offered to have the costs in question independently assessed or "taxed", by a Taxing Master. In the opinion of the Court, this would have been a reasonable method of assessment that corresponded to the practice followed in the United Kingdom. However, the applicants did not take up this offer.

In these circumstances, the Court accepts the figure of £65,000 offered by the Government in respect of all legal costs and expenses.

V. CONCLUSION

17. The items awarded by the Court in paragraphs 11 and 13 above total £19,626 for Mr. Young, £51,215 for Mr. James and £11,076 for Mr. Webster. From these figures are to be deducted the payments made by the Government on account (see paragraph 5 above), namely £1,000 to Mr. Young, £5,000 to Mr. James and £1,000 to Mr. Webster. The Court considers that the applicants should also receive, on the items in respect of which interest was included in the Government's offer, additional interest to cover the period from 17 March 1982 to the date of payment; the additional interest should be calculated in the same manner as the interest offered by the Government.

From the sum of £65,000 accepted in paragraph 16 above falls to be deducted the sum of 35,764 FF which the applicants have received by way of legal aid in connection with the proceedings before the Commission and the Court (see paragraphs 5 and 16 above).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the United Kingdom is to pay:
 - (a) in respect of pecuniary losses and non-pecuniary loss:
 - to Mr. Young, the sum of eighteen thousand six hundred and twenty-six pounds sterling (£18,626);
 - to Mr. James, the sum of forty-six thousand two hundred and fifteen pounds sterling (£46,215);
 - to Mr. Webster, the sum of ten thousand and seventy-six pounds sterling (£10,076);
 - together in each case with the additional interest referred to in paragraph 17 of this judgment;
 - (b) to the three applicants together, in respect of legal costs and expenses referable to the proceedings before the Commission and the Court, the total sum of sixty-five thousand pounds sterling (£65,000) less thirty-five thousand seven hundred and sixty-four French francs (35,764 FF);
2. Rejects the remainder of the claims for just satisfaction.

Done in English and in French, the English text being authentic, at the Human Rights Building, Strasbourg, this eighteenth day of October, one thousand nine hundred and eighty-two.

For the President
Denise BINDSCHEDLER-ROBERT
Judge

Marc-André EISSEN
Registrar