

EUROPEAN COURT OF HUMAN RIGHTS

342
10.5.2001

Press release issued by the Registrar

JUDGMENT IN THE CASE OF Z. AND OTHERS v. THE UNITED KINGDOM

The European Court of Human Rights has today delivered a Grand Chamber judgment in the case of *Z. and others v. the United Kingdom* (application no. 29392/95).

The Court held:

- Unanimously, that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;
- Unanimously, that **no separate issues arose under Article 8** (right to respect for family life) of the Convention;
- By 12 votes to five, that there had been **no violation of Article 6** (right to a fair trial) of the Convention;
- By 15 votes to two, that there had been a **violation of Article 13** (right to an effective remedy) of the Convention.

Under Article 41 (just satisfaction) of the Convention, the Court awarded in respect of pecuniary damage 8,000 pounds sterling (GBP) to Z., GBP 100,000 to A., GBP 80,000 to B., and GBP 4,000 to C. The Court also awarded GBP 32,000 to each applicant for non-pecuniary damage and a total of GBP 39,000 for costs and expenses.

1. Principal facts

The applicants, four siblings, Z, a girl born in 1982, A, a boy born in 1984, B, a boy born in 1986 and C, a girl born in 1988 are all British nationals.

In October 1987, the applicants' family was referred to the social services by its health visitor because of concerns about the children, including reports that Z was stealing food.

Over the next four-and-a-half years, the social services monitored the family and provided various forms of support to the parents. During this period, problems continued. In October 1989, when investigating a burglary, the police found the children's rooms in a filthy state, the mattresses being soaked with urine. In March 1990, it was reported that Z and A were stealing food from bins in the school. In September 1990, A and B were reported as having bruises on their faces. On a number of occasions, it was reported that the children were locked in their rooms and were smearing excrement on the windows. Finally, on 10 June 1992, the children were placed in emergency foster care on the demand of their mother who said that, if they were not removed from her care, she would batter them. The consultant psychologist who examined the children found that the older three were showing signs of serious psychological disturbance and noted that it was the worst case of neglect and emotional abuse she had seen.

The Official Solicitor, acting for the applicants, commenced proceedings against the local authority claiming damages for negligence on the basis that the authority had failed to have

proper regard for the children's welfare and to take effective steps to protect them. Following proceedings which terminated in the House of Lords, the applicants' claims were struck out. In the judgment given on 29 June 1995, which concerned three cases, Lord Browne-Wilkinson held, among other things, that public policy considerations were such that local authorities should not be held liable in negligence in respect of the exercise of their statutory duties safeguarding the welfare of children.

2. Procedure

The case was lodged with the European Commission of Human Rights on 9 October 1995 and declared admissible on 26 May 1998. In its report (available on HUDOC on the Court's Internet site www.echr.coe.int), the Commission expressed the opinion, unanimously, that there had been violations of Articles 3 and 6 of the Convention and that no separate issues arose under Articles 8 or 13. The case was referred to the Court by the Commission on 25 October 1999. A public hearing in the case was held on 28 June 2000.

3. Composition of the Court

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,
Elisabeth **Palm** (Swedish),
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Luigi **Ferrari Bravo**¹ (Italian),
Lucius **Caflich**² (Swiss),
Pranas **Kūris** (Lithuanian),
Josep **Casadevall** (Andorran),
Boštjan **Zupančič** (Slovenian),
Nina **Vajić** (Croatian),
John **Hedigan** (Irish),
Wilhelmina **Thomassen** (Dutch),
Margarita **Tsatsa-Nikolovska** (FYROMacedonia),
Egils **Levits** (Latvian),
Kristaq **Traja** (Albanian),
Anatoly **Kovler** (Russian), *judges*,
Lady Justice **Arden** (British) *ad hoc judge*,

and also Paul **Mahoney**, *Deputy Registrar*.

¹ Judge elected in respect of San Marino.

² Judge elected in respect of Liechtenstein.

4. Complaints

The applicants alleged that the local authority had failed to take adequate protective measures in respect of the severe neglect and abuse which they were known to be suffering due to their ill-treatment by their parents and that they had no access to court or to an effective remedy in respect of this. They invoked Articles 3, 6, 8 and 13 of the Convention.

5. Decision of the Court¹

Article 3

The Court re-iterated that Article 3 enshrined one of the most fundamental values of a democratic society, prohibiting in absolute terms torture or inhuman or degrading treatment or punishment. States which had ratified the European Convention on Human Rights were bound to ensure that individuals within their jurisdiction were not subjected to inhuman or degrading treatment, including such ill-treatment administered by private individuals. These measures should provide effective protection, in particular, of children and other vulnerable people and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.

There was no dispute that the neglect and abuse suffered by the four child applicants reached the threshold of inhuman and degrading treatment. The Government did not contest the Commission's finding that the treatment suffered by the four applicants reached the level of severity prohibited by Article 3 and that the State failed in its positive obligation under Article 3 of the Convention to provide the applicants with adequate protection against inhuman and degrading treatment. This treatment was brought to the attention of the local authority, at the earliest in October 1987, which was under a statutory duty to protect the children and had a range of powers available to it, including removing them from their home. The children were however only taken into emergency care, at the insistence of their mother, on 30 April 1992.

Over the intervening period of four-and-a-half years, they had been subjected in their home to what the child consultant psychiatrist who examined them referred to as horrific experiences. The Criminal Injuries Compensation Board had also found that the children had been subject to appalling neglect over an extended period and suffered physical and psychological injury directly attributable to a crime of violence. The Court acknowledged the difficult and sensitive decisions facing social services and the important countervailing principle of respecting and preserving family life. The present case however left no doubt as to the failure of the system to protect the applicants from serious, long-term neglect and abuse. Accordingly, there had been a violation of Article 3.

Article 8

Having regard to its finding of a violation of Article 3, the Court considered that no separate issue arose under Article 8.

1. This summary by the Registry does not bind the Court.

Article 6

Concerning the applicability of Article 6, the Court was satisfied that, at the outset of the proceedings, there was a serious and genuine dispute about the existence of the right asserted by the applicants under the domestic law of negligence and that the applicants had, on at least arguable grounds, a claim under domestic law. Article 6 was therefore applicable to the proceedings brought by the applicants alleging negligence by the local authority.

Concerning compliance with Article 6, the Court found that the outcome of the domestic proceedings brought was that the applicants, and any children with complaints such as theirs, could not sue a local authority in negligence for compensation, however foreseeable – and severe - the harm suffered and however unreasonable the conduct of the local authority in failing to take steps to prevent that harm. However, this did not result from any procedural bar or from the operation of any immunity which restricted access to court. The striking out of the applicants' claim resulted from the application by the domestic courts of substantive law principles and it was not for this Court to rule on the appropriate content of domestic law. Nonetheless, the applicants were correct in their assertions that the gap they had identified in domestic law was one that gave rise to an issue under the Convention, but in the Court's view it was an issue under Article 13, not Article 6 § 1. The applicants' complaints were essentially that they had not been afforded a remedy in the courts for the failure to ensure them the level of protection against abuse to which they were entitled under Article 3. Considering that it was under Article 13 that the applicants' right to a remedy should be examined, the Court found no violation of Article 6.

Article 13

In deciding whether there had been a violation of Article 13, the Court observed that where alleged failure by the authorities to protect people from the acts of others was concerned, there should be available to the victim or the victim's family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention. Furthermore, in the case of a breach of Articles 2 and 3, which ranked as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress.

The applicants had argued that, in their case, an effective remedy could only be provided by adversarial court proceedings against the public body responsible for the breach. The Court noted that the Government had conceded that the range of remedies at the disposal of the applicants was insufficiently effective and that, in the future, under the Human Rights Act 1998, victims of human rights breaches would be able to bring proceedings in courts empowered to award damages.

The Court found that the applicants did not have available to them an appropriate means of obtaining a determination of their allegations that the local authority had failed to protect them from inhuman and degrading treatment or the possibility of obtaining an enforceable award of compensation for the damage suffered thereby. Consequently, they were not afforded an effective remedy in respect of the breach of Article 3 and there had, accordingly, been a violation of Article 13.

Judges Rozakis, Palm, Thomassen, Casadevall and Kovler expressed partly dissenting opinions and Lady Justice Arden and Judge Kovler expressed concurring opinions, all of which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Registry of the European Court of Human Rights

F – 67075 Strasbourg Cedex

Contacts: Roderick Liddell (telephone: (0)3 88 41 24 92)

Emma Hellyer (telephone: (0)3 90 21 42 15)

Fax: (0)3 88 41 27 91

The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.