EUROPEAN HUMAN RIGHTS CASE SUMMARIES

Barbara Mensah

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FOREWORD

In the short period of its existence, the new and permanent European Court of Human Rights has already delivered more judgments than its predecessor delivered in the previous 38 years. This is at least in part a reflection of the dramatic increase in the number of applications with which the new Court has been confronted since it came into being.

This increase has brought with it new challenges, not the least of which is the difficulty it poses for practitioners and students alike in keeping abreast of the Court's rapidly developing case law.

It is because of the contribution which this book makes to facilitating this task that it is particularly to be welcomed. Prepared by Barbara Mensah, who as a barrister and former lecturer at the Inns of Court School of Law London has done much to foster knowledge of the Convention system within the United Kingdom, the clear, concise and accurate summaries of the facts, decision and reasoning in all judgments delivered between 1960 and 2000 will serve as an invaluable and practical guide to the jurisprudence of the Strasbourg Court, old and new. I warmly recommend the book.

Sir Nicolas Bratza
European Court of Human Rights
Strasbourg
July 2001

PREFACE

The aim of this book is to provide a complete reference source of the European Court of Human Rights judgments in a single volume. I have presented a summary of all the cases decided by the Court in the last 40 years. To ensure accuracy I have attempted as far as possible to provide verbatim accounts of the judgments. Included in the information on each case is a summary of the facts, the decision of the Commission (before November 1998), the names of the judges and their decisions as well as the details of the judges who dissented, the ratio, other cases referred to by the judges and where relevant the decision on costs and damages. Section II provides a chronological listing of the cases, each case is given a number based on the year of the decision on merits, followed by the position of the case in the court's list of decisions that year.

Section III provides a subject index which includes both Court judgments and Commission decisions on admissibility and reports. Under each subject heading I have tried to give an indication of the typical/most frequently raised Convention rights, eg, electoral rights usually raise issues under Protocol 1, Article 3, Articles 10 and 11; some of the same cases under that subject may also be listed under freedom of association and freedom of expression. The cases under each subject heading are listed chronologically (except length of proceedings cases which are listed by country, type of case and then chronologically). I hoped by this chronological listing to show the development of the Court's jurisprudence by subject – this has worked better for some subjects (eg, homosexuality) than for others (eg, armed forces where there may be many issues involved). The cases under Court judgments provide name of case, reference number (see Section II) and brief description of the case.

I have also included under each subject in Section III the reported Commission decisions on admissibility and reports. These are listed chronologically, showing the name of the case, the date of decision (reports are indicated as 'Rep' all other entries are Decisions on admissibility), the reference in the volumes of Decisions and Reports (indicated by volume number and page number) and a brief indication of the nature of the case. [For those unfamiliar with the Decisions and Reports series my subject index summaries can be interpreted as follows: Example 1, '*X v D* (30.9.1974) 1/73 (expulsion of Algerian)' relates to the case of *X v Germany*, a Commission decision on admissibility of 30 September 1974 reported in volume 1 of Decisions and Reports at page 73. Example 2, '*Müller v A* (Rep 1.10.1975) 3/25 (loss of pension rights)', is a Commission Report (generally following an admissibility decision) of 1 October 1975 at page 25 of volume 3. From volume 76, the cases are reported in two parts; Part A contains the original text and Part B the translated text, I have given the reference for the English text in all cases. Example 3, '*Boffa & 13 others v RSM* (15.1.1998) 92B/27 (law requiring compulsory vaccination of children against hepatitis B)' and Example 4, '*Aboikonie & Read v NL* (12.1.1998) 92A/23 (expulsion of Surinamese national with criminal convictions but wife and children resident in Netherlands)', the original text of *Aboikonie* is in English, in Part A, whereas *Boffa* has French original text and the English translation therefore appears in Part B.

Section IV provides a list of the countries of the Council of Europe (as at March 2001) and Section V contains the relevant Articles and Protocols of the European Convention on Human Rights. Section V sets out the composition of the Court from its inception to the present day. Over the years there has been the use of ad hoc judges for various reasons; I have included the ad hoc judges and the cases on which they sat. Out of concern for the size of this book, I have tried to abbreviate information where possible and sensible to do so. I have done so extensively in Section V on composition of the Court, and hope that I have not unduly inconvenienced researchers by that.

I am very grateful to Leila Agyeman, formerly of the Immigration Appellate Service Research Department, had it not been for her amazing patience on the Court's website and methodical work this book would have missed more than the dozen deadlines I promised the publishers.

I am also very grateful to the following who contributed to summaries: James Robinson, Barrister, former Senior Lecturer at the Inns of Court School of Law; Alexis Slatter, Barrister; Koli Mukhopadhyay, Lawyer, London; Tom Davidson, Senior Lecturer, University of London; Nathalia Berkowitz, Senior Legal and Research Officer, Immigration Appellate Authority; Rexford Darko, Lawyer; Ben Urdang, Barrister; Jeffrey Yates, Lawyer USA; Dean Kershaw, Barrister.

At stages, despite their own very heavy study commitments, various very enthusiastic 2000/2001 Inns of Court School of Law students undertook research for me and helped in other ways. I am very grateful to them. They are James Burton, Nick De Marco, Sahima Qamar, Sarbjit Singh Bakhshi and Emmanuel Vincent.

Barbara Mensah

Lincoln's Inn

July 2001

FOREWORD

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Sir Nicolas Bratza
European Court of Human Rights
Strasbourg
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LIST OF ABBREVIATIONS

A	Article.
Comm	Commission (prior to the coming into force of Protocol 11 and the new court, there was a two tier system of Commission and part-time Court).
FS	Friendly Settlement (if a friendly settlement is agreed between the parties, the Court will strike the case out of the list giving only a brief statement of the facts and the solution reached, new Article 39).
G	Grand Chamber (under the new Article 27, the Court sits in committees of 3 judges, Chambers of seven judges and in a Grand Chamber of 17 judges).
JS	Just satisfaction (Article 41 (previously Article 50) states that, where there has been a violation and the State only allows partial reparation to be made, the Court shall, if necessary, give just satisfaction to the injured party).
NA	Not applicable.
NE	Not examined.
NV	Non violation.
P	Protocol (followed by a number, for example, P4A3 represents Protocol 4, Article 3. P without a number would refer to Portugal, see below).
para	Paragraph.
Prelim	Preliminary issue.
Rep	Report.
s	Section.
SO	Struck out (the Court may strike an application out of the list if it concludes that the applicant does not intend to pursue his application, or the matter has been resolved or for any other reason it is not justified to continue the application, Article 37).
V	Violation
EHRR	European Human Rights Reports

Abbreviations relating to judgments

c	concurring opinion
d	dissenting opinion
jc	joint concurring opinion
jd	joint dissenting opinion

jpc	joint partly concurring opinion
jpd	joint partly dissenting opinion
pc	partly concurring opinion
pd	partly dissenting opinion
so	separate opinion

LIST OF COUNTRY ABBREVIATIONS

Albania	AL
Andorra	AND
Armenia	AM
Austria	A
Azerbaijan	AZ
Belgium	B
Bulgaria	BG
Croatia	HR
Cyprus	CY
Czech Republic	CZ
Denmark	DK
Estonia	EST
Finland	SF/FIN
France	F
Georgia	GE
Germany	D
Greece	GR
Hungary	H
Iceland	ISL
Ireland	IRL
Italy	I
Latvia	LV
Liechtenstein	FL
Lithuania	LT
Luxembourg	L
Malta	M
Moldova	MD
Netherlands	NL
Norway	N
Poland	PL
Portugal	P
Romania	RO
Russia	RUS
San Marino	RSM
Slovakia	SK
Slovenia	SLO
Spain	E
Sweden	S
Switzerland	CH
(The Former Yugoslav Republic of) Macedonia	TFYR Macedonia
Turkey	TR
Ukraine	U
United Kingdom	UK

LIST OF MONEY ABBREVIATIONS

Albanian lekë	ALL
Austrian schilling (schillings and groschen)	ATS
Belgian franc	BEF
Bulgarian lev (leva and stotinki)	BGL
Croatian kuna	KN
Cyprus pound (pounds and cents)	CYP
Czech koruna (korunas and haléru)	CZK
Danish krone (krone and øre)	DKK
Estonian Kroon (kroon and sents)	EEK
Finnish marks (markka and penniä)	FIM
French franc (francs and centimes)	FF
German mark (deutschemark and pfennig)	DM
Greek drachmas	GRD
Hungarian forint	HF
Icelandic króna	ISK
Irish pound/punt (pounds and pence)	IRP
Italian lira	ITL
Latvian Lats (lati and santimi)	LVL
Lithuanian litas (litas and centu)	LTL
Luxembourg franc	LUF
Maltese lira (lire and cents)	MTL
Netherlands guilder (guilders and cents)	NLG
Norwegian krone (kroner and øre)	NOK
Polish zloty (zlotys and groszy)	PLN
Portuguese escudo (escudos and centavos)	PTE
Romanian lei	ROL
Russian rouble (roubles and kopecks)	RR
Slovakian koruna (korunas and haliers)	SKK
Slovenian tolar (tolars and stotins)	SIT
Spanish pesetas	ESP
Swedish krona/crowns (kronor and öre)	SEK
Swiss franc (francs and centimes)	CHF
UK pound (pounds and pence)	GBD
Macedonian denar	TFYROMD
Turkish lire	TRL
United States dollars	USD

CONTENTS

A

A v France (1994) 17 EHRR 462 93/49

[Application lodged 15.2.1989; Commission report 2.9.1992; Court Judgment 23.11.1993]

The applicant was charged on 23 July 1981 with five other persons, including Mr G, with attempted murder, infringement of the arms and ammunition legislation and infringement of the law regarding protection and control of nuclear substances. Information came from Mr G, an informant, who approached the Chief Superintendent of police and volunteered to make a phone call to the applicant to discuss the crime with her. The Chief Superintendent accepted the informant's offer but did not at the time inform his superiors. On 7 March 1991 the court found no case to answer against the applicant. The applicant complained that there had been an infringement of her private life.

Comm found by majority (9–2) V 8.

Court unanimously rejected the Government's preliminary objection and found V 8.

Judges: Mr R Ryssdal, President, Mr Thór Vilhjálmsson, Mr L-E Pettiti, Mr B Walsh, Mr R Macdonald, Mr C Russo, Mr J De Meyer, Mr JM Morenilla, Sir John Freeland.

An appeal to the Court of Cassation was one of the remedies that should in principle be exhausted in order to comply with A 26. Even supposing that it was probably bound to fail in this specific case, the filing of the appeal was thus not a futile step. It consequently had the effect at the very least of postponing the beginning of the six-month period. The objection that the application was out of time was therefore dismissed. The applicant laid a complaint, together with an application to join the resulting criminal proceedings as a civil party, alleging invasion of privacy and breach of the confidentiality of telephone communications and pursued the said proceedings to their conclusion. She could not be criticised for not having had recourse to legal remedies which would have been directed essentially to the same end and would in any case not have offered better chances of success. Accordingly, the objection alleging failure to exhaust domestic remedies was also dismissed.

The telephone conversation did not lose its private character solely because its content concerned or might concern the public interest. The recording complained of depended on the informant and the Chief Superintendent working together; the former conceived and put into effect the plan to make the recording, by going to see the Chief Superintendent and then telephoning the applicant. The Superintendent was an official of a 'public authority'. He made a crucial contribution to executing the scheme by making available for a short time his office, his telephone and his tape recorder. Although he did not inform his superiors of his actions and had not sought the prior authorisation of an investigating judge, he was acting in the performance of his duties as a high-ranking police officer. The public authorities were involved to such an extent that the State's responsibility under the Convention was engaged. In any event the recording represented an interference in respect of which the applicant was entitled to the protection of the French legal system. The interference undoubtedly concerned the applicant's right to respect for her 'correspondence'. In these circumstances it was not necessary to consider whether it also affected her 'private life'. The interference had not been 'in accordance with the law', the contested recording had no basis in domestic law and was therefore in breach of A 8. It was therefore unnecessary to consider the other requirements of para 2 of A 8.

Finding of violation constituted sufficient just satisfaction for any non-pecuniary damage. Costs and expenses (FF 50,000) awarded.

Cited: BUF (25.3.1992), Crémieux v F (25.2.1993), Kruslin v F (24.4.1990).

A v United Kingdom (1999) 27 EHRR 611 98/80

[Application lodged 15.7.1994; Commission report 18.9.1997; Court Judgment 23.9.1998]

The applicant, born in 1984 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. The stepfather was charged with assault occasioning actual bodily harm and tried in February 1994. He accepted having caned the boy on a number of occasions, but argued that this had been necessary and reasonable since A was a difficult boy who did not respond to parental or school discipline. The jury found by a majority verdict that the applicant's stepfather was not guilty of assault occasioning actual bodily harm. The applicant complained that the State had failed to protect him from ill-treatment by his step-father, that he had been denied a remedy for his complaints and that the domestic law on assault discriminated against children.

Comm found unanimously V 3, by majority (16–1) not necessary to examine 8, unanimously NV 13 and not necessary to examine 14+3 and 14+8.

Court found unanimously V 3, not necessary to examine 8, 13, 14.

Judges: Mr R Bernhardt, President, Mr L-E Pettiti, Mr C Russo, Mrs E Palm, Sir John Freeland, Mr P Kûris, Mr J Casadevall, Mr P Van Dijk, Mr V Toumanov.

Both the Commission and the Government accepted that there had been a violation of A 3. The Court recalled that ill-treatment must attain a minimum level of severity if it was to fall within the scope of A 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 effects and, in some instances, the sex, age and state of health of the victim. The applicant, who was nine years old at the time of the assault, was found by the consultant pediatrician who examined him to have been beaten with a garden cane which had been applied with considerable force on more than one occasion. That treatment reached the level of severity prohibited by A 3. States are required to take measures 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. 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. English law allowed as a defence to a charge of assault on a child that the treatment in question amounted to 'reasonable chastisement'. The law did not provide adequate protection to the applicant against treatment or punishment contrary to A 3. The failure to provide adequate protection constituted a violation of A 3. In the circumstances it was 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 A 8.

As the applicant accepted the Commission's finding of no violation of A 13 and did not pursue his complaint under A 14 it was not necessary for the Court to consider those complaints.

Non-pecuniary damage (GBP 10,000), costs and expenses (GBP 20,000 less FF 35,264) awarded.

Cited: Costello-Roberts v UK (25.3.1993), Coyne v UK (24.9.1997), Findlay v UK (25.2.1997), HLR v F (29.4.1997), Stubbings and Others v UK (22.10.1996), X and Y v NL (26.3.1995).

A and Others v Denmark (1996) 22 EHRR 458 96/3

[Application lodged 27.8.1992; Commission report 24.5.1995; Court Judgment 8.2.1996]

The 10 applicants were HIV victims or relatives of deceased victims of the virus who were infected with HIV during the time they were receiving blood transfusions at Danish hospitals. They sought compensation from the State and complained about the length of the proceedings.

Comm found unanimously V 6(1) for first 8 applicants and NV 6(1) for last 2 applicants.

Court found by majority (6–3) V 6(1) for first 8 applicants, unanimously NV 6(1) for last 2 applicants.

Judges: Mr R Ryssdal, President, Mr F Matscher, Mr L-E Pettiti, Mr A Spielmann, Mr J De Meyer, Mr I Foighel, Mr JM Morenilla, Mr D Gotchev, Mr B Repik.

The proceedings involved the determination of the applicants' 'civil rights' and A 6(1) applied. The mere fact that the applicants belonged to a category of members on whose behalf the Danish

Association of Haemophiliacs had acted on 14 December 1987 was not sufficient to justify the conclusion that they were affected by the duration of the proceedings from that date onwards. It was only from the dates when the Association identified the applicants as individual plaintiffs that they could claim to be victims within the meaning of A 25. Accordingly, the periods to be taken into consideration were different for the different applicants: The periods to be taken into account had lasted approximately six years and two months, five years and three months, three years, five years and 10 months and four years and 11 months. The reasonableness of the length of proceedings had to be assessed in the light of the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicants and that of the relevant authorities. Although the case raised factual and legal questions of some complexity, that alone could not justify the length of the proceedings. The applicants were to a significant extent responsible for the protracted nature of the proceedings: they had not requested the High Court to speed up the proceedings, they had requested or consented to a large number of adjournments taken more than two years to agree on the appointment of experts and provided no convincing explanation for why they waited a long time before submitting claims for damages. The proceedings were not inquisitorial but were subject to the principle that it was for the parties to take the initiative with regard to their progress. The Court recognised that in those circumstances, the competent authorities were faced with a difficult task in trying to accommodate the various interests of the applicants. However, those features did not excuse them from ensuring compliance with the requirement of reasonable time. What was at stake in the proceedings was of crucial importance for the applicants in view of the incurable disease from which they were suffering and their reduced life expectancy. Accordingly, regarding the first eight applicants, the competent administrative and judicial authorities were under a positive obligation under A 6(1) to act with the exceptional diligence required by the Court's case-law in disputes of this nature. The High Court granted all the requests for adjournments, hardly ever using its powers to require the parties to specify their claims, clarify their arguments, adduce relevant evidence or decide on who should be appointed as experts. There were also delays from the Supreme Court. In those circumstances, even having regard to the delays caused by the applicants, the competent authorities had not acted with the exceptional diligence required. No duty of exceptional diligence applied with regard to the last two applicants (father and son died and had submitted later claims) who were not victims of a violation of A 6(1).

Damages (DKK 100,000 to each applicant) and legal fees (DKK 234,938).

Cited: Capuano v I (25.6.1987), Guincho v P (10.7.1984), Kamasinski v A (19.12.1989), Karakaya v F (26.8.1994), Scopelliti v I (23.11.1993), Stanford v UK (23.2.1994), Vallée v F (26.4.1994), X v F (31.3.1992).

AB v Italy 00/60

[Application lodged 1.3.1997; Court Judgment 8.2.2000]

Mr AB complained of the length of administrative proceedings.

Court found by majority (6–1) V 6(1).

Judges: Mrs E Palm, President, Mr B Conforti, Mr J Casadevall, Mr L Ferrari Bravo (d), Mr C Bîrsan, Mr B Zupancic, Mrs W Thomassen.

The period to be taken into consideration began on 24 July 1992 and ended on 2 February 1998. It had lasted more than five years, six months at one level of jurisdiction.

Non-pecuniary damage (ITL 10,000,000), costs and expenses (ITL 1,000,000).

Cited: Bottazzi v I (28.7.1999).

ADT v United Kingdom 00/198

[Application lodged 25.3.1997; Court Judgment 31.7.2000]

On 1 April 1996 police officers conducted a search under warrant of the home of the applicant, a practising homosexual, and seized various items including photographs and video tapes. The