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

THIRD SECTION

**CASE OF DUYONOV AND OTHERS v. THE UNITED KINGDOM**

*(Application no. 36670/97)*

JUDGMENT
(Friendly Settlement)

STRASBOURG

2 October 2001

**In the case of Duyonov and Others v. the United Kingdom,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 September 2001,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

1. The case originated in an application (no. 36670/97) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Georgian nationals, German Duyonov, Alexy Mirza, Vadim Sprygin, Nikolai Ivanov ("the applicants"), on 27 May 1997.

2. The applicants were represented before the Court by Mr S.R. Bossino, a lawyer practising in Gibraltar. The United Kingdom Government ("the Government") were represented by their Agent, Mr C.A. Whomersley, Foreign and Commonwealth Office, London.

3. The applicants complained under Articles 6 and 13 of the Convention about the absence of legal aid for proceedings before the Privy Council.

4. On 7 November 2000, after obtaining the parties' observations, the Court declared the application admissible.

5. On 8 June 2001 and on 9 July 2001 the applicants' representative and the Agent of the Government respectively submitted formal declarations accepting a friendly settlement of the case.

# THE FACTS

## A. The circumstances of the case

6. The facts of the case, as submitted by the parties, may be summarised as follows.

On 17 November 1995 the applicants were put ashore in Gibraltar, having been led to believe that they were arriving in Canada. They were fleeing from their native country, Georgia, and had paid for a passage to Canada, where they intended to seek political asylum. The applicants immediately surrendered themselves to the immigration authorities. The Governor of Gibraltar issued an order pursuant to section 59 (1) of the Immigration Control Ordinance ("the Ordinance") for their removal from Gibraltar and for their detention pending such removal. Section 59 (1) of the Ordinance provides as follows:

> "Any person found in Gibraltar or attempting to enter Gibraltar contrary to the provisions of this Ordinance and any person unlawfully within Gibraltar (hereinafter in this section called 'an unauthorised person') may, in addition to any fine or imprisonment authorised hereunder, be removed from Gibraltar by order of the Governor or of the magistrates' court and may be detained in such manner as may be directed by the Governor or such court until so removed."

7. The order was renewed from time to time, with release allowed for specific periods from 20 April 1996. On 20 August 1996 the applicants applied for a writ of habeas corpus on the ground that section 59 (1) of the Ordinance did not authorise their detention. On 3 September 1996 Pizzarello J determined that the order was unlawful on the ground that the power to detain was conditional on the existence of a "fine or imprisonment". In the absence of either, there was no power to detain.

8. On 4 October 1996 the Court of Appeal reversed this decision, finding that the applicants' detention was within the powers granted by section 59 (1).

9. The applicants applied to the Chief Justice for leave to appeal, and to the Registrar of the Court of Appeal for legal aid. On 24 October 1996 the Registrar granted legal aid for preparation of the Appeal Record for transmission to the Privy Council, but refused legal aid for the proceedings on the ground that legal aid was not available for appeals to the Privy Council. The applicants appealed that refusal to the Chief Justice. On 29 October 1996, provisional leave to appeal to the Privy Council was granted, conditional on obtaining legal aid or if financial security could be obtained.

10. On 30 January 1997 the Chief Justice found that, as proceedings before the Privy Council were not included in Part II of the Schedule to the Legal Aid and Assistance Ordinance, legal aid could not be granted for such proceedings. He noted that the procedures before the Privy Council are complicated and do not readily lend themselves to presentation by a litigant who is not legally aided and added, "Furthermore, in this appeal there are matters of law, as indeed there are in most appeals which reach the Privy Council, which it will be difficult for a layman to present. Following the Airey case I find that in denying the applicants access to legal assistance to present these appeals, the Gibraltar legislation does not conform to the obligations imposed by the Convention".

11. The appeal to the Privy Council did not, in the event, proceed.

## B. Relevant domestic law and practice

12. Section 12 of the Gibraltar Legal Aid and Assistance Ordinance defines the scope and condition of legal assistance in civil proceedings. Sub-section (2) of section 12 reads:

> "The proceedings in connection with which legal assistance may be given are any proceedings of a description mentioned in Part I of the Schedule except proceedings mentioned in Part II of the Schedule."

Part II of the Schedule has no relevance to the current application. Part I of the Schedule reads:

"DESCRIPTION OF PROCEEDINGS

1. Proceedings in any of the following courts –

(a) Supreme Court;

(b) Court of First Instance;

(c) Magistrates' court in its civil jurisdiction in domestic proceedings;

(d) Court of Appeal.

2. Proceedings before any person to whom a case is referred in whole or in part by any of the said courts."

13. On 5 March 2001 the Gibraltar House of Assembly passed legislation to allow legal aid to be granted for appeals to the Privy Council.

# THE LAW

14. On 9 July 2001 the Court received the following declaration from the Government Agent:

> "I declare that the Government of the United Kingdom offer to pay £5,000 to Messrs German Duyonov, Alexey Mirza, Vadim Sprygin, and Nikolai Ivanov with a view to securing a friendly settlement of the application registered under no. 36670/97. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable immediately after the notification of the judgment delivered by the Court pursuant to the Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.
>
> The Government further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention."

15. On 8 June 2001 the Court received from the applicants' representative the following declaration on the applicants' behalf:

> "I note that the Government of the United Kingdom are prepared to pay a sum totalling £5,000 covering both pecuniary and non-pecuniary damage and costs to Messrs German Duyonov, Alexey Mirza, Vadim Sprygin and Nikolai Ivanov with a view to securing a friendly settlement of application no. 36670/97 pending before the Court.
>
> I accept the proposal and waive any further claims in respect of the United Kingdom relating to the facts of this application. I declare that the case is definitely settled.
>
> This declaration is made in the context of a friendly settlement which the Government and the applicants have reached.
>
> I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

16. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

17. Accordingly, the case should be struck out of the list.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;

2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 2 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President