

Case of Sutherland v. the United Kingdom

(Application no. 25186/94)

**Judgment
(Striking out)**

Strasbourg, 27 March 2001

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In the case of Sutherland v. the United Kingdom,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,

Mrs E. PALM,

Mr J.-P. COSTA,

Mr L. FERRARI BRAVO,

Mr L. LOUCAIDES,

Mr W. FUHRMANN,

Mr K. JUNGWIERT,

Mr M. FISCHBACH,

Mrs N. VAJIĆ

Mr J. HEDIGAN,

Mrs W. THOMASSEN,

Mr M. PELLONPÄÄ,

Mrs M. TSATSA-NIKOLOVSKA,

Mr T. PANȚIRU,

Mr E. LEVITS,

Mr K. TRAJA, *judges*

Sir John FREELAND, *ad hoc judge*,

and also of Mr M. DE SALVIA, *Registrar*,

Delivers the following judgment, which was adopted on 21 March 2001:

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by the European Commission of Human Rights (“the Commission”) on 15 September 1997 (Article 5 § 5 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 25186/94) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under former Article 25 of the Convention by a British national, Mr Euan Sutherland (“the applicant”), on 8 June 1994.

3. The applicant complained that the fixing of the minimum age for lawful homosexual activities between men at 18, rather than 16 as for women, violated his right to respect for private life under Article 8 of the Convention and was discriminatory in breach of that Article taken in conjunction with Article 14.

4. The Commission declared the application admissible on 21 May 1996. In its report of 1 July 1997 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 8, taken in conjunction with Article 14, of the Convention (14 votes to 4).

5. Before the Court the applicant was represented by Mr S. Grosz, a lawyer practising in London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr M. Eaton of the Foreign and Commonwealth Office. Following his retirement the latter was replaced by Mr C.A. Whomersley of the same Office.

6. On 13 October 1997 the Government and the applicant submitted an agreement to the effect that the Government would in the summer of 1998 propose a Bill to Parliament for a reduction of the age of consent for homosexual acts from 18 to 16. Once legislation had been passed and the Government had agreed to pay the applicant reasonable costs, the parties would apply to the Court inviting it to approve a friendly settlement. The parties agreed that they would make the necessary applications to the Court for extensions of the time for lodging memorials. The Government undertook not to contest the applicant’s application pending consideration of the issue by Parliament.

7. On 8 April 1998 Mr R. Bernhardt, President of the former Court, directed that the Government and the applicant should each have until 21 September 1998 to file a memorial, whilst reserving the question of the further

procedure. Subsequently, he granted an extension of the said time-limit to 1 December 1998.

8. After the entry into force of Protocol No. 11 on 1 November 1998 and in accordance with the provisions of Article 5 § 5 thereof, the case was referred to the Grand Chamber of the Court. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and former Rule 24 of the Rules of Court. Sir Nicolas Bratza, the judge elected in respect of the United Kingdom, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). The Government accordingly appointed Sir John Freeland to sit as an *ad hoc* judge in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

9. Subsequently, pending completion of the national Parliamentary process described in paragraphs 14-15 below, Mr Wildhaber, President of the new Court, and the Grand Chamber granted several successive requests for extension of the time-limit for the submission of memorials, the last from July 2000 until the end of the Parliamentary Session that year.

10. By letters received by the Court on 15 January, 23 January and 5 February 2001 the applicant's representative and the Agent of the Government submitted formal declarations requesting the Court to strike the case out of its list of cases and informing it that the Government had paid the applicant's costs.

THE FACTS

11. The applicant is a British national, born in 1977 and resident in London. At about the age of 12 he became aware that he was sexually attracted to boys. When he was 14 he tried going out with a girl but the experience confirmed for him that he could only find a fulfilling relationship with another man. He had his first homosexual encounter when he was 16, with another person of his age who also was homosexual. They had sexual relations but were both worried about the fact that under the law as applicable at the time it was a criminal offence. In 1990 455 prosecutions had given rise to 342 convictions. In 1991 213 prosecutions gave rise to 169 convictions. The applicant was never prosecuted.

12. The relevant law included the following provisions.

Under section 12(1) of the Sexual Offences Act 1956 it was an offence for a person to commit buggery with another person. Under section 13 it was an offence for a man to commit an act of "gross indecency" with another man, whether in public or private. Notwithstanding these provisions, under section 1 of the Sexual Offences Act 1967 such acts should not be an offence provided that the parties had consented thereto and had attained the age of 21.

In contrast, the age of consent with respect to women was 16. Thus, while under section 14(1) of the 1956 Act, it was an offence for a person to commit an indecent assault on a woman, section 14(2) provided that a girl under the age of 16 could not give any consent which would prevent an act being an assault for the purposes of the section.

13. On 21 February 1994 the House of Commons, by 307 votes to 280, rejected an amendment to reduce the minimum age of consent for male homosexual acts to 16 but, by 427 votes to 162, accepted an amendment to reduce the minimum age to 18.

14. Following the Commission's report of 1 July 1997, concluding that the applicant was the victim of a violation of Article 8 of the Convention, taken in conjunction with Article 14, the Government proposed in June 1998 a Crime and Disorder Bill to Parliament for a further reduction of the age of consent for homosexual acts between men from 18 to 16. The provisions on the equalisation of the age of consent were accepted by a great majority of the House of Commons but were rejected by the House of Lords. Subsequently, a Sexual Offences (Amendment) Bill was introduced on 16 December 1998 and, again, the equalisation of the age of consent was endorsed on 25 January 1999 by the House of Commons, but was rejected on 14 April 1999 by the House of Lords.

15. In order to ensure that the equalisation of the age of consent would become law even if the House of Lords were to reject it, the Bill was reintroduced before the House of Commons under the Parliament Act 1911. Under the Act the Bill could not pass the House of Commons until after 25 January 2000, the anniversary of the second successful reading in this House.

On 28 January 2000 the Bill was re-introduced before the House of Commons. After being passed by 263 votes to 102, it was introduced into the House of Lords on 29 February 2000, where, on 11 April 2000, the Bill received its Second Reading unopposed, while some Lordships expressed that they would propose amendments. As a result of such proposals the Bill was effectively adopted, under the Parliament Act, not until the end of the Parliamentary

Session in 2000. The Sexual Offences (Amendment) Act 2000 equalising the age of consent received Royal Assent on 30 November 2000 and was brought into force on 8 January 2001.

THE LAW

16. On 15 December 2000 the representative of the applicant informed the Registrar that the Sexual Offences (Amendment) Act 2000 had received the Royal Assent and that, as soon as the Commencement Order had been made, the parties would ask the Court to strike the case out of its list of cases.

17. On 15 January 2001 the Court received from the applicant's representative a declaration which stated:

"The Commencement Order has now been made and the relevant provisions of the Sexual Offences (Amendment) Act came into force on 8th January 2001

We confirm that in the circumstances the Court may strike the case from its list."

18. On 23 January 2001 the Court received the following declaration from the Government:

"I refer to my predecessor's letter of 25 July [2000] ... seeking a further postponement of the proceedings in the above case until the end of the then current United Kingdom Parliamentary Session. This request was granted in your letter of 11 September 2000.

I now attach a copy of the Sexual Offences (Amendment) Act 2000, which received the Royal Assent on 30 November 2000 and was brought into force on 8 January 2001.

In these circumstances, the Government consider that the issues raised in the above application have now been resolved, and accordingly the Government request that the Court strike the application out in accordance with Article 37 § 1 of the Convention."

19. By letter of 1 February 2001, received by the Court on 5 February, the applicant's representative informed the Court that the Government had paid the applicant's costs.

20. The Court takes note of the request made by each party to strike the case out of its list in the light of the entry into force on 8 January 2001 of the Sexual Offences (Amendment) Act 2000. By equalising the age of consent for homosexual acts between consenting males to 16, the new provisions removed the risk or threat of prosecution that previously existed under the national law of the respondent State and which had prompted the applicant's bringing an application under the Convention. It is further noted that the Government have reimbursed the legal costs incurred by the applicant in pursuing his case.

Against this background, the Court is satisfied that the matter has been resolved for the purposes of Article 37 § 1 b of the Convention. In addition, it discerns no reason of *ordre public* (public order) for continuing the proceedings (Article 37 § 1 *in fine* of the Convention).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing on 27 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Luzius WILDHABER

President
Michele DE SALVIA
Registrar

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