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

CASE OF HASHMAN AND HARRUP v. THE UNITED KINGDOM

(Application no. 25594/94)

JUDGMENT

STRASBOURG

25 November 1999

In the case of Hashman and Harrup v. the United Kingdom,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), as amended by Protocol No. 11[1], and the relevant provisions of the Rules of Court[2], as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr A. PASTOR RIDRUEJO,
Mr G. BONELLO,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J.-P. COSTA,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr V. BUTKEVYCH,
Mr J. CASADEVALL,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mrs S. BOTOUCHAROVA,
Lord REED, ad hoc *judge*,

and also of Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 23 June and 27 October 1999,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 2 November 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 25594/94) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission under former Article 25 by two United Kingdom nationals, Mr Joseph Hashman and Ms Wanda Harrup, on 19 August 1994. The applicants were represented by Mr J. Bate, a solicitor practising in Woking.

1-2. *Note by the Registry*. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 10 of the Convention.

2. In accordance with the provisions of Article 5 § 4 of Protocol No. 11 taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, a panel of the Grand Chamber decided on 20 January 1999 that the case would be examined by the Grand Chamber of the Court. The Grand Chamber included *ex officio* Sir Nicolas Bratza, the judge elected in respect of the United Kingdom (Article 27 § 2 of the Convention and Rule 24 § 4), Mr L. Wildhaber, the President of the Court, Mrs E. Palm, Vice-President of the Court, and Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr A. Pastor Ridruejo, Mr G. Bonello, Mr J. Makarczyk, Mr P. Kūris, Mr R. Türmen, Mrs F. Tulkens, Mrs V. Strážnická, Mr P. Lorenzen, Mr V. Butkevych, Mr A.B. Baka, Mr R. Maruste and Mrs S. Botoucharova (Rule 24 § 3).

Subsequently Sir Nicolas Bratza, who had taken part in the Commission's examination of the case, withdrew from sitting in the Grand Chamber (Rule 28). On 13 May 1999 the Government of the United Kingdom ("the Government") appointed Lord Reed to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1). Later Mr Makarczyk, who was unable to take part in the further consideration of the case, was replaced by Mr J. Casadevall (Rule 24 § 5 (b)).

3. In accordance with the President's decision, a hearing took place in public in the Human Rights Building, Strasbourg, on 23 June 1999.

There appeared before the Court:

(a) *for the Government*
Mr M. EATON, *Agent*,
Mr J. MORRIS QC, Attorney General,
Mr R. SINGH,
Ms M. DEMETRIOU, *Counsel*,
Ms C. STEWART,
Mr S. BRAMLEY, Home Office, *Advisers*;

(b) *for the applicants*
Mr P. CODNER, *Counsel*.

The Court heard addresses by Mr Codner and Mr Morris.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. On 3 March 1993 the applicants blew a hunting horn and engaged in hallooing with the intention of disrupting the activities of the Portman Hunt. A complaint was made to the Gillingham magistrates that the applicants should be required to enter into a recognisance with or without sureties to keep the peace and be of good behaviour pursuant to the Justices of the Peace Act 1361.

5. The applicants were bound over to keep the peace and be of good behaviour in the sum of 100 pounds sterling for twelve months on 7 September 1993. They appealed to the Crown Court, which heard their appeals on 22 April 1994 at Dorchester.

6. The Crown Court, comprising a Crown Court judge and two magistrates, found that the applicants had not committed any breach of the peace and that their conduct had not been likely to occasion a breach of the peace. It found the following facts:

> "(a) On 3rd March, 1993, Edward Lycett Green, a joint Master of the Portman Hunt, saw the [applicants] in the environs of the Ranston Estate, and heard the sound of a hunting horn being blown from that position. Later, at about 1.15 p.m., he saw the [applicants'] car on Iwerne Hill and again heard the sound of a hunting horn being blown. On that occasion he also heard [the second applicant] hallooing. Some hounds were drawn towards the [applicants], and hunt staff had to be deployed to recover them.
>
> (b) At about 1.45 p.m., a solitary hound ran out of Rolf's Wood along the Higher Shaftesbury Road. It suddenly, and for no apparent reason, ran across the road and was killed by a lorry travelling in the direction of Blandford Forum.
>
> (c) At about 3.45 p.m., [the first applicant] stated to a police constable that he had been blowing a hunting horn, but nowhere near where the hound was killed. The police officer seized the hunting horn.
>
> (d) Iwerne Hill is about a mile from where the hound was killed, and, at the time of its death, it was travelling away from the hunt and away from Iwerne Hill.
>
> (e) On their own admissions each [applicant] was a hunt saboteur. [The first applicant] admitted that he had blown the horn and [the second applicant] that she shouted at hounds. Their object was to distract hounds from hunting and killing foxes.
>
> (f) An expert, a Mr A. Downes, told us that he had observed hunts for many years and had frequently seen hounds running loose on the road away from the main pack. In his opinion, this caused danger to hounds and to other users of the road."

7. On the basis of these facts, the Crown Court was of the following opinion:

"(a) The [applicants'] behaviour had been a deliberate attempt to interfere with the Portman Hunt and to take hounds out of the control of the huntsman and the whippers-in.

(b) That in this respect the actions of the [applicants] were unlawful, and had exposed hounds to danger.

(c) That there had been no violence or threats of violence on this occasion, so that it could not be said that any breach of the peace had been committed or threatened.

(d) That the [applicants] would repeat their behaviour unless it were checked by the sanction of a bind over.

(e) That the [applicants'] conduct had been *contra bonos mores*.

(f) That *R. v. Howell* [see below] was distinguishable in that it related to the power of arrest for breach of the peace, which could only be exercised if there was violence or the immediate likelihood of violence.

(g) That the power to bind over 'to keep the peace and be of good behaviour' was wider than the power of arrest and could be exercised whenever it was proved either that there had been a breach of the peace or that there had been behaviour *contra bonos mores*, since a breach of the peace is *ex hypothesi contra bonos mores*, and the words 'to keep the peace' added nothing to what was required of the defendant by the words 'to be of good behaviour'."

8. The court noted that neither the Law Commission's report on binding over nor the European Convention was part of domestic law.

9. The Crown Court judge agreed to state a case to the High Court, but legal aid for the case stated was refused on 5 August 1994. The applicants' appeals against the decisions were dismissed on 19 September 1994.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Breach of the peace and conduct *contra bonos mores*

10. Breach of the peace – which does not constitute a criminal offence (*R. v. County of London Quarter Sessions Appeals Committee, ex parte Metropolitan Police Commissioner* [1948] 1 King's Bench Reports 670) – is a common-law concept of great antiquity. However, as Lord Justice Watkins, giving judgment in the Court of Appeal in the case of *R. v. Howell* ([1982] 1 Queen's Bench Reports 416), remarked in January 1981:

"A comprehensive definition of the term 'breach of the peace' has very rarely been formulated …" (p. 426)

He continued:

"We are emboldened to say that there is likely to be a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance." (p. 427)

11. In a subsequent case before the Divisional Court (*Percy v. Director of Public Prosecutions* [1995] 1 Weekly Law Reports 1382), Mr Justice Collins followed *Howell* in holding that there must be a risk of violence before there could be a breach of the peace. However, it was not essential that the violence be perpetrated by the defendant, as long as it was established that the natural consequence of his behaviour would be to provoke violence in others:

> "The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and so some actual danger to the peace is established." (p. 1392)

12. In *Nicol and Selvanayagam v. Director of Public Prosecutions* ([1996] 160 Justice of the Peace Reports 155), Lord Justice Simon Brown stated:

> "… the court would surely not find a [breach of the peace] proved if any violence likely to have been provoked on the part of others would be not merely unlawful but wholly unreasonable – as of course, it would be if the defendant's conduct was not merely lawful but such as in no material way interfered with the other's rights. *A fortiori*, if the defendant was properly exercising his own basic rights, whether of assembly, demonstration or free speech." (p. 163)

13. Behaviour *contra bonos mores* has been described as "conduct which has the property of being wrong rather than right in the judgment of the majority of contemporary fellow citizens" (*per* Lord Justice Glidewell in *Hughes v. Holley* [1988] 86 Criminal Appeal Reports 130).

14. In *R. v. Sandbach, ex parte Williams* ([1935] 2 King's Bench Reports 192) the Divisional Court rejected the view that a person could not be bound over to be of good behaviour when there was no reason to apprehend a breach of the peace. As in the case of binding over to keep the peace, there had to be some reason to believe that there might be a repetition of the conduct complained of before an order to be of good behaviour could be made.

B. Binding over

15. Magistrates have powers to "bind over" under the Magistrates' Courts Act 1980 ("the 1980 Act"), under common law and under the Justices of the Peace Act 1361 ("the 1361 Act").

A binding-over order requires the person bound over to enter into a "recognisance", or undertaking secured by a sum of money fixed by the court, to keep the peace or be of good behaviour for a specified period of time. If he or she refuses to consent to the order, the court may commit him or her to prison, for up to six months in the case of an order made under the 1980 Act or for an unlimited period in respect of orders made under the 1361 Act or common law. If an order is made but breached within the specified time period, the person bound over forfeits the sum of the recognisance. A binding-over order is not a criminal conviction (*R. v.*

County of London Quarter Sessions, ex parte Metropolitan Police Commissioner [1948] 1 King's Bench Reports 670).

1. Binding over under the Magistrates' Courts Act 1980

16. Section 115 of the 1980 Act provides:

> "(1) The power of a magistrates' court on the complaint of any person to adjudge any other person to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour towards the complainant shall be exercised by order on complaint.
>
> …
>
> (3) If any person ordered by a magistrates' court under subsection (1) above to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour fails to comply with the order, the court may commit him to custody for a period not exceeding 6 months or until he sooner complies with the order."

2. Binding over at common law and under the Justices of the Peace Act 1361

17. In addition to the statutory procedure, magistrates have powers to bind over at common law and under the 1361 Act. These powers allow magistrates, at any stage in proceedings before them, to bind over any participant in the proceedings if they consider that the conduct of the person concerned is such that there might be a breach of the peace or that his or her behaviour has been *contra bonos mores*. It is not open to the justices to attach specific conditions to a binding-over order (*Ayu* [1959] 43 Criminal Appeal Reports 31; *Goodlad v. Chief Constable of South Yorkshire* [1979] Criminal Law Review 51).

3. Appeals

18. An order of the magistrates to require a person to enter into a recognisance to keep the peace or to be of good behaviour can be appealed either to the High Court or the Crown Court. An appeal to the High Court is limited to questions of law, and proceeds by way of "case stated". An appeal to the Crown Court, under the Magistrates' Courts (Appeals from Binding-Over Orders) Act 1956, section 1, proceeds as a rehearing of all issues of fact and law.

4. The Law Commission's report on binding over

19. In response to a request by the Lord Chancellor to examine binding-over powers, the Law Commission (the statutory law reform body for England and Wales) published in February 1994 its report entitled "Binding Over", in which it found that:

> "4.34 We regard reliance on *contra bonos mores* as certainly, and breach of the peace as very arguably, contrary to elementary notions of what is required by the principles of natural justice when they are relied on as definitional grounds justifying

> the making of a binding-over order. Because an order binding someone to be of good behaviour is made in such wide terms, it fails to give sufficient indication to the person bound over of the conduct which he or she must avoid in order to be safe from coercive sanctions …
>
> …
>
> 6.27 We are satisfied that there are substantial objections of principle to the retention of binding over to keep the peace or to be of good behaviour. These objections are, in summary, that the conduct which can be the ground for a binding-over order is too vaguely defined; that binding-over orders when made are in terms which are too vague and are therefore potentially oppressive; that the power to imprison someone if he or she refuses to consent to be bound over is anomalous; that orders which restrain a subject's freedom can be made without the discharge of the criminal, or indeed any clearly defined, burden of proof; and that witnesses, complainants or even acquitted defendants can be bound over without adequate prior information of any charge or complaint against them." (Law Commission Report no. 222)

The Law Commission recommended abolition of the power to bind over.

PROCEEDINGS BEFORE THE COMMISSION

20. The applicants applied to the Commission on 19 August 1994. They alleged violations of Articles 5, 10 and 11 of the Convention.

21. The Commission declared the application (no. 25594/94) partly admissible on 26 June 1996. In its report of 6 July 1998 (former Article 31 of the Convention), it expressed the opinion that there had been a violation of Article 10 of the Convention (twenty-five votes to four). The full text of the Commission's opinion and of the two dissenting opinions contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

22. The Government asked the Court to find that the facts of the case disclosed no breach of the Convention. The applicants invited the Court to find a violation of Article 10 of the Convention and to award costs.

1. *Note by the Registry*. For practical reasons this annex will appear only with the final printed version of the judgment (in the official reports of selected judgments and decisions of the Court), but a copy of the Commission's report is obtainable from the Registry.

THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

23. Before the Commission the applicants made a complaint under Article 11 of the Convention (see paragraph 20 above).

24. This complaint was not pursued before the Court, which sees no reason to consider it of its own motion (see, for example, the Stallinger and Kuso v. Austria judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-II, p. 680, § 52).

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicants alleged a violation of Article 10 of the Convention. In particular, they claimed that the finding that they had behaved in a manner *contra bonos mores* and the subsequent binding-over order constituted an interference with their rights under Article 10 which was not "prescribed by law" within the meaning of that provision. The relevant parts of Article 10 read as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the prevention of disorder or crime ... [or] for the protection of the reputation or rights of others ..."

26. The Court must determine whether the case discloses any interference with the applicants' right to freedom of expression, and if so, whether any such interference was "prescribed by law", pursued a legitimate aim and was "necessary in a democratic society" within the meaning of Article 10 § 2.

A. As to the existence of an interference with the applicants' freedom of expression

27. The applicants, "hunt saboteurs", disrupted the Portman Hunt on 3 March 1993. Proceedings were brought as a result of which they were bound over in the sum of 100 pounds sterling not to breach the peace and to be of good behaviour for twelve months.

28. The Court recalls that proceedings were brought against the applicants in respect of their behaviour while protesting against fox hunting by disrupting the hunt. It is true that the protest took the form of impeding the activities of which they disapproved, but the Court considers nonetheless that it constituted an expression of opinion within the meaning

of Article 10 (see, for example, the Steel and Others v. the United Kingdom judgment of 23 September 1998, *Reports* 1998-VII, p. 2742, § 92). The measures taken against the applicants were, therefore, an interference with their right to freedom of expression.

B. Whether the interference was "prescribed by law"

29. The Government submitted that the concepts of breach of the peace and behaviour *contra bonos mores* were sufficiently precise and certain to comply with the requirement under Article 10 § 2 that any limitations on freedom of expression be "prescribed by law". With particular reference to the concept of behaviour *contra bonos mores*, the Government accepted that the power was broadly defined, but claimed that the breadth was necessary to meet the aims of the power, and sufficient to meet the requirements of the Convention. They stated that the power to bind over to be of good behaviour gave magistrates a vital tool in controlling anti-social behaviour which had the potential to escalate into criminal conduct. They also noted that the breadth of the definition facilitated the administration of justice as social standards altered and public perception of acceptable behaviour changed. The Government disagreed with the Commission's conclusion that there was no objective element to help a citizen regulate his conduct: they pointed to the Chorherr case, where an administrative offence of causing "a breach of the peace by conduct likely to cause annoyance" fell within the scope of the concept of "prescribed by law" (Chorherr v. Austria judgment of 25 August 1993, Series A no. 266-B, pp. 35-36, § 25). They also pointed to the test under English law of whether a person had acted "dishonestly" for the purpose of the Theft Acts 1968 and 1978 which was, at least in part, the standard of ordinary reasonable and honest people (*R. v. Ghosh* [1982] Queen's Bench Reports 1053), and to the test for whether a publication was defamatory, namely whether the statement concerned would lower a person in the opinion of right-thinking members of society. Finally, the Government submitted that, on the facts of the case, the applicants should have known that what they had done was *contra bonos mores* and they should have known what they should do to avoid such behaviour in the future: they had acted in a way intended to disrupt the lawful activities of others, and should not have been in any doubt that their behaviour was unlawful and should not be repeated. The Government recalled that the Court was concerned with the case before it, rather than the compatibility of domestic law with the Convention *in abstracto*.

30. The applicants, with reference to the Commission's report and to the report of the Law Commission (see paragraph 19 above), considered that the law on conduct *contra bonos mores* lacked sufficient objective criteria to satisfy the requirements of Article 10 § 2. They further considered that an order not to act *contra bonos mores* could not be prescribed by law as it did not state what it was that the subject of the order might or might not lawfully do, such that it was not "prescribed by law".

31. The Court recalls that one of the requirements flowing from the expression "prescribed by law" is foreseeability. A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct. At the same time, whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed (see generally in this connection, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

32. The Court further recalls that prior restraint on freedom of expression must call for the most careful scrutiny on its part (see, in the context of the necessity for a prior restraint, the *Sunday Times* v. the United Kingdom (no. 2) judgment of 26 November 1991, Series A no. 217, pp. 29-30, § 51).

33. The Court has already considered the issue of "lawfulness" for the purposes of Article 5 of the Convention of orders to be bound over to keep the peace and be of good behaviour in its above-mentioned Steel and Others judgment (pp. 2738-40, §§ 71-77). In that case, the Court found that the elements of breach of the peace were adequately defined by English law (ibid., p. 2739, § 75).

34. The Court also considered whether the binding-over orders in that case were specific enough properly to be described as "lawful order[s] of a court" within the meaning of Article 5 § 1 (b) of the Convention. It noted at paragraph 76 of the judgment that:

> "… the orders were expressed in rather vague and general terms; the expression 'to be of good behaviour' was particularly imprecise and offered little guidance to the person bound over as to the type of conduct which would amount to a breach of the order. However, in each applicant's case the binding-over order was imposed after a finding that she had committed a breach of the peace. Having considered all the circumstances, the Court is satisfied that, given the context, it was sufficiently clear that the applicants were being requested to agree to refrain from causing further, similar, breaches of the peace during the ensuing twelve months."

The Court also noted that the requirement under Article 10 § 2 that an interference with the exercise of freedom of expression be "prescribed by law" is similar to that under Article 5 § 1 that any deprivation of liberty be "lawful" (ibid., p. 2742, § 94).

35. It is a feature of the present case that it concerns an interference with freedom of expression which was not expressed to be a "sanction", or punishment, for behaviour of a certain type, but rather an order, imposed on the applicants, not to breach the peace or behave *contra bonos mores* in the future. The binding-over order in the present case thus had purely prospective effect. It did not require a finding that there had been a breach of the peace. The case is thus different from the case of Steel and Others, in which the proceedings brought against the first and second applicants were

in respect of breaches of the peace which were later found to have been committed.

36. The Court must consider the question of whether behaviour *contra bonos mores* is adequately defined for the purposes of Article 10 § 2 of the Convention.

37. The Court first recalls that in its Steel and Others judgment, it noted that the expression "to be of good behaviour" "was particularly imprecise and offered little guidance to the person bound over as to the type of conduct which would amount to a breach of the order" (ibid., pp. 2739-40, § 76). Those considerations apply equally in the present case, where the applicants were not charged with any criminal offence, and were found not to have breached the peace.

38. The Court next notes that conduct *contra bonos mores* is defined as behaviour which is "wrong rather than right in the judgment of the majority of contemporary fellow citizens" (see paragraph 13 above). It cannot agree with the Government that this definition has the same objective element as conduct "likely to cause annoyance", which was at issue in the Chorherr case (see paragraph 29 above). The Court considers that the question of whether conduct is "likely to cause annoyance" is a question which goes to the very heart of the nature of the conduct proscribed: it is conduct whose likely consequence is the annoyance of others. Similarly, the definition of breach of the peace given in the case of *Percy v. Director of Public Prosecutions* (see paragraph 11 above) – that it includes conduct the natural consequences of which would be to provoke others to violence – also describes behaviour by reference to its effects. Conduct which is "wrong rather than right in the judgment of the majority of contemporary fellow citizens", by contrast, is conduct which is not described at all, but merely expressed to be "wrong" in the opinion of a majority of citizens.

39. Nor can the Court agree that the Government's other examples of behaviour which is defined by reference to the standards expected by the majority of contemporary opinion are similar to conduct *contra bonos mores* as in each case cited by the Government the example given is but one element of a more comprehensive definition of the proscribed behaviour.

40. With specific reference to the facts of the present case, the Court does not accept that it must have been evident to the applicants what they were being ordered not do for the period of their binding over. Whilst in the case of Steel and Others the applicants had been found to have breached the peace, and the Court found that it was apparent that the binding over related to similar behaviour (ibid.), the present applicants did not breach the peace, and given the lack of precision referred to above, it cannot be said that what they were being bound over not to do must have been apparent to them.

41. The Court thus finds that the order by which the applicants were bound over to keep the peace and not to behave *contra bonos mores* did not comply with the requirement of Article 10 § 2 of the Convention that it be "prescribed by law".

42. In these circumstances, the Court is not required to consider the remainder of the issues under Article 10 of the Convention.

43. It follows that there has been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Costs and expenses

45. The applicants claimed a total of 6,000 pounds sterling plus value-added tax in respect of costs and expenses in the Strasbourg proceedings, less amounts received by way of legal aid before the Court and Commission. The Government agreed with this figure.

The Court is satisfied that the claim for costs and expenses is reasonable, and should be reimbursed in its entirety.

B. Default interest

46. According to the information available to the Court, the statutory rate of interest applicable in England and Wales at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that it is not necessary to examine the applicants' complaint under Article 11 of the Convention;

2. *Holds* by sixteen votes to one that there has been a violation of Article 10 of the Convention;

3. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, within three months, for costs and expenses, 6,000 (six thousand) pounds sterling, together with any value-added tax that may be chargeable less the sums paid by way of legal aid;
   (b) that simple interest at an annual rate of 7.5% shall be payable from the expiry of the above-mentioned three months until settlement.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 November 1999.

Luzius WILDHABER
President

Paul MAHONEY
Deputy Registrar

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Baka is annexed to this judgment.

L.W.
P.J.M.

DISSENTING OPINION OF JUDGE BAKA

It is not the task of an international judge to defend a national institution which clearly shows certain shortcomings. The magistrates' power to bind over – as the Law Commission's report on the subject explains – is based on "conduct which … is too vaguely defined; … binding-over orders when made are in terms which are too vague and are therefore potentially oppressive; … the power to imprison someone if he or she refuses to consent to be bound over is anomalous ...". For these and other reasons the Law Commission even recommended abolition of the power to bind over.

On the other hand, it is not easy to destroy old, established institutions which are deeply rooted in a country's legal system and have proved their usefulness over the centuries for protecting the rights of the public, as in the present case. If we look at the concrete circumstances of the case, what the applicants did according to the national courts' finding was "a deliberate attempt to interfere with the Portman Hunt and to take the hounds out of … control ...". They were avowed hunt saboteurs and as such they deliberately tried seriously to disturb other people's lawfully organised pleasure and leisure activity or even make it impossible. Their action, according to the Crown Court's findings, had not resulted in "violence or threats of violence on this occasion, so that it could not be said that any breach of the peace had been committed or threatened". On the other hand, their action, in my opinion, definitely required an adequate and proportionate legal response in order to protect others.

I agree with the Court that this case is different from the case of Steel and Others v. the United Kingdom (judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII), in which the binding-over decision was based on breaches of the peace, while in the present case the findings against the applicants were based on behaviour *contra bonos mores*. In the Steel and Others case the Court was satisfied that binding-over orders had been imposed after a finding that the applicants had committed a breach of the peace, the elements of which – according to the Court's findings – "were adequately defined by English law" (see the Steel and Others judgment, p. 2739, § 75). What I do not agree with is that "the order by which the applicants were bound over to keep the peace and not to behave *contra bonos mores* did not comply with the requirement of Article 10 § 2 of the Convention that it be prescribed by law" (see paragraph 41 of the judgment).

The Court, when analysing the "prescribed by law" requirement of Article 10 § 2, has always reiterated that "the level of precision required of the domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument considered, the field it is designed to cover and the number and status of those to whom it is addressed". It has pointed out also that "it is primarily for the national authorities to interpret and apply domestic law" (see the Chorherr v. Austria judgment of 25 August 1993, Series A no. 266-B, pp. 35-36, § 25).

On the basis of these elements of foreseeability, I am of the opinion that in the concrete circumstances of the case, the applicants should have known what kind of behaviour was *contra bonos mores*. It is true that the requirement is broadly defined, but taking into account the nature of the disturbance and the limited number of offenders, the institution of binding over to be of good behaviour imposed an unmistakable obligation on the applicants, namely to refrain from any offensive and deliberate action which could disturb the lawfully organised activity of others engaged in fox hunting. In my view, the "keep the peace or be of good behaviour" obligation has to be interpreted in the light of the specific anti-social behaviour committed by the applicants. In this context, I think that the binding-over requirement was foreseeable and enabled the applicants to a reasonable extent to behave accordingly.

On this basis, I think that the interference with the applicants' rights under Article 10 § 2 not only served a legitimate aim but was also prescribed by law and necessary in a democratic society. Consequently, I find no breach of Article 10 of the Convention.