



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

THIRD SECTION

CASES OF

McDAID v. THE UNITED KINGDOM

(Application no. 34822/97)

WARD v. THE UNITED KINGDOM

(Application no. 34957/97)

GILES v. THE UNITED KINGDOM

(Application no. 34988/97)

LEECE v. THE UNITED KINGDOM

(Application no. 35575/97)

SHORTERS v. THE UNITED KINGDOM

(Application no. 35576/97)

THWAITES v. THE UNITED KINGDOM

(Application no. 35578/97)

JUDGMENT

(Striking out)

STRASBOURG

10 October 2000

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In the cases of McDaid 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 P. KÜRIS,

Mrs F. TULKENS,

Mrs H.S. GREVE,

Mr K. TRAJA,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 19 September 2000,

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

PROCEDURE

1. The cases were referred to the Court as established under former Article 19 of the Convention by the European Commission of Human Rights (“the Commission”) by the Government of the United Kingdom (“the Government”) by letter dated 27 September 1999 within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. They originated in applications (nos. 34822/97, 34957/97, 34988/97, 35575/97, 35576/97 and 35578/97) against the United Kingdom registered before the Commission under former Article 25 in respect of six British nationals, James McDaid, Shane Ward, Stephen Giles, James Leece, Tracey Shorters and Kevin Thwaites, (“the applicants”) on 11, 18 and 19 February and on 9 April 1997. The applicants had all been tried by court-martial and mainly complained under Article 6 § 1 of the Convention about the lack of a fair hearing by an independent and impartial tribunal. On 31 May 1999 the Commission unanimously concluded that there had been a violation of Article 6 § 1 of the Convention.

The Government’s request was based on former Articles 44 and 48 and on the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (former Article 46). The object of the request was not to contest the breach of Article 6 § 1 found by the Commission in each case, but rather to seek a ruling pursuant to Article 41 of the Convention on the issue of what, if any, compensation should be paid by the Government to the applicants as a result of the violation found by the Commission.

2. The applicants were represented before the Court by Mr G. Blades, a lawyer practising in Lincoln. The Government were initially represented by their Agent, Mr M. Eaton and, subsequently, by their Agent Mr C. Whomersley, both of the Foreign and Commonwealth Office.

3. In accordance with 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 of the Court decided that the cases should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently, the President of the Court, acting under Rule 52 § 1 of the Rules of Court, assigned the cases to the Third Section.

The Chamber constituted within the Section to consider the cases included *ex officio* Sir Nicolas Bratza, the judge elected in respect of the United Kingdom (Article 27 § 2 of the Convention and Rule 26 § 1 (a)). Having taken part in the Commission's examination of the cases, Sir Nicolas Bratza subsequently withdrew from sitting in the Chamber (Rule 28). Following the agreement later reached by the parties (see below), the Government waived the presence of the national judge for the Court's final examination of the cases.

4. On 4 and 8 August 2000 the Agent of the Government and the applicants' representative, respectively submitted formal declarations to the Court confirming the conclusion of a friendly settlement of the cases.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

5. At the time of the events in question, all applicants, with the exception of Ms Shorters, were serving in the army and were tried by either district or general courts-martial convened pursuant to the Army Act 1955. Ms Shorters was serving in the Royal Air Force and she was tried by a district court-martial convened pursuant to the Air Force Act 1955.

6. Mr McDaid, Mr Giles, Ms Shorters and Mr Thwaites were charged, tried and convicted by court-martial of civilian criminal offences. Mr Ward was charged with a civilian criminal offence and pleaded guilty during his court-martial. Mr Leece was charged, tried and convicted by his court-martial of an armed forces' disciplinary offence for which he was sentenced to, *inter alia*, six months' imprisonment.

II. THE RELEVANT DOMESTIC LAW AND PRACTICE

7. The relevant provisions of the Army Act 1955 and the Air Force Act 1955 are set out respectively in the judgments of the European Court of Human Rights in the Findlay and Coyne cases (Findlay v. the United Kingdom judgment of 25 February 1997, *Reports of Judgments and*

Decisions 1997-I, pp. 272-75, §§ 32-51, and *Coyne v. the United Kingdom* judgment of 24 September 1997, *Reports* 1997-V, pp. 1848-52, §§ 20-44).

8. Central to the system under the 1955 Acts was the role of the “convening officer”. This officer (who had to be of a specified rank and in command of a body of the regular forces or of the command within which the person to be tried was serving) assumed responsibility for every case to be tried by court-martial. He or she had the final decision on the nature and detail of the charges to be brought and the type of court-martial required, and was responsible for convening the court-martial.

9. The convening officer would draw up a convening order, which would specify, *inter alia*, the date, place and time of the trial, the name of the president and the details of the other members, all of whom he could appoint. Failing the appointment of a judge advocate by the Judge Advocate General’s Office, the convening officer could appoint one. He also appointed, or directed a commanding officer to appoint, the prosecuting officer.

10. Prior to the hearing, the convening officer was responsible for sending an abstract of the evidence to the prosecuting officer and to the judge advocate, and could indicate the passages which might be inadmissible. He procured the attendance at trial of all witnesses to be called for the prosecution. When charges were withdrawn, the convening officer’s consent was normally obtained, although it was not necessary in all cases, and a plea to a lesser charge could not be accepted from the accused without it. He had also to ensure that the accused had a proper opportunity to prepare his defence, legal representation if required and the opportunity to contact the defence witnesses, and was responsible for ordering the attendance at the hearing of all witnesses “reasonably requested” by the defence.

11. The convening officer could dissolve the court-martial either before or during the trial, when required in the interests of the administration of justice. In addition, he could comment on the proceedings of a court-martial. Those remarks would not form part of the record of the proceedings and would normally be communicated in a separate minute to the members of the court, although in an exceptional case, where a more public instruction was required in the interests of discipline, they could be made known in the orders of the command.

12. The convening officer usually acted as confirming officer also. A court-martial’s findings were not effective until confirmed by the confirming officer, who was empowered to withhold confirmation or substitute, postpone or remit in whole or in part any sentence.

13. Since the applicants’ trials, the law has been amended by the Armed Forces Act 1996 (see the above-mentioned *Findlay v. the United Kingdom* judgment, p. 276, §§ 52-57).

AS TO THE LAW

14. The applicants mainly complained under Article 6 § 1 that, in respect of the court-martial proceedings against them, they did not have a fair trial by an independent and impartial tribunal.

15. By letter dated 11 April 2000 the Government indicated that they had renewed to the applicants a friendly settlement offer which had been previously mooted before the Commission.

16. By letter dated 19 April 2000 the applicants' representative confirmed that the applicants had agreed to a settlement of the cases on the basis of the Government's agreement to discharge each applicants' legal costs and expenses for the Convention proceedings in the sum of GBP £750 (exclusive of value-added tax) in each case. The Government's letter of 10 May 2000 confirmed that an agreement had been reached on the basis of the payment of these legal costs and expenses incurred by the applicants.

17. By letter dated 4 August 2000 the Government confirmed that the settlement sums had been paid to the applicants and by letter dated 8 August 2000 the applicants' representative confirmed receipt of the settlement monies.

18. The Court takes note of the agreement reached between the parties. 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).

19. Accordingly, the cases should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the cases out of the list.

Done in English, and notified in writing on 10 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President