



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

THIRD SECTION

CASE OF MILLS v. THE UNITED KINGDOM

(Application no. 35685/97)

JUDGMENT

STRASBOURG

5 June 2001

FINAL

05/09/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mills 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,

Mr P. KÜRIS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 5 December 2000 and 15 May 2001,

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

PROCEDURE

1. The case originated in an application (no. 35685/97) 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 a national of the United Kingdom, Simon John Mills (“the applicant”), on 9 April 1997.

2. The applicant was represented before the Court by Mr J. Mackenzie, a solicitor practising in London. The United Kingdom Government (“the Government”) were represented by their Agent, Ms R. Mandal, of the Foreign and Commonwealth Office.

3. The applicant mainly complains about his court-martial proceedings, submitting that he did not have a fair hearing by an independent and impartial tribunal established by law.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 5 December 2000 the Chamber declared the application partly admissible and no observations were submitted thereafter.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 13 February 1994 the applicant, who was a Lance Corporal in the British Army stationed at Munster in Germany, was involved in a disturbance in a bar during which another British soldier was seriously assaulted.

8. On 8 December 1994 he was charged (pursuant to section 70 of the Army Act 1955) with wounding with intent contrary to section 18 of the Offences Against the Person Act 1861. He was formally remanded for trial by general court-martial by his commanding officer on the same day.

9. The court-martial took place in Germany on 24-27 April 1995. The applicant was found guilty as charged and he was sentenced to 4 years' imprisonment, to dismissal from the service and to reduction to the ranks.

10. On 3 June 1995 the conviction and sentence were confirmed by the Confirming Officer and on 8 September 1995 the applicant's petition to the Army Board was rejected.

11. On 12 January 1996 the applicant applied to a single judge of the Courts-Martial Appeal Court for leave to appeal to that court and he was granted leave to appeal together with legal aid. The full Courts-Martial Appeal Court rejected his appeal on 8 November 1996.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant provisions of the Army Act 1955 are set out in the judgment of the European Court of Human Rights in the Findlay case (Findlay v. the United Kingdom judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, §§ 32-51).

13. Central to the system under the 1955 Act 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. Since the applicant's trial, the law has been amended by the Armed Forces Act 1996 (see the above-mentioned *Findlay v. the United Kingdom* judgment, at §§ 52-57).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complained, invoking Article 6 § 1 of the Convention, that he did not have a fair hearing by an independent and impartial tribunal established by law. Article 6 § 1, insofar as relevant, reads as follows:

"1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

A. Applicability of Article 6 § 1 of the Convention

20. The Court notes the sentence imposed on the applicant (four years' imprisonment) together with the nature of the charge of which he was convicted (wounding with intent contrary to section 18 of the Offences Against the Person Act 1861). It considers that the applicant's court-martial proceedings involved the determination of a charge of a criminal nature within the meaning of Article 6 § 1 of the Convention (the Garyfallou AEBE v. Greece judgment of 24 September 1997, *Reports* 1997-V, no. 49, §§ 32-33, with further references).

B. Independence and impartiality of the applicant's court-martial

21. The applicant mainly argued that his court-martial was not independent or impartial and that the proceedings against him were consequently unfair.

Prior to the admissibility of the application, the Government accepted that, in the light of the Findlay case (cited above) and the Coyne v. the United Kingdom case (judgment of 24 September 1997, *Reports* 1997-V), the court-martial failed to satisfy the requirements of Article 6 § 1 as to independence and impartiality and that there had been a violation of Article 6 § 1 of the Convention in this respect. Neither the Government nor the applicant submitted any observations after the admissibility of the application.

22. The Court recalls that, in the above-mentioned Findlay judgment, the Court held that a general court-martial convened pursuant to the Army Act 1955 did not meet the requirements of independence and impartiality set down by Article 6 § 1 of the Convention in view, in particular, of the central part played in its organisation by the convening officer. In this latter respect, the Court considered that the convening officer was central to the applicant's prosecution and was closely linked to the prosecution authorities; the Court expressed some concern that the members of the court-martial were subordinate (either directly or indirectly) to the convening officer, and the Court found it significant that the convening officer also acted as confirming officer.

23. The Court subsequently found a district court-martial convened pursuant to the Air Force Act 1955 to have similar deficiencies (the above-cited Coyne v. the United Kingdom judgment, at §§ 20-44). In particular, it considered that there were no significant differences between the part played by the convening officer in Mr Coyne's court-martial, under the Air Force Act 1955, and in that of Mr Findlay, under the Army Act 1955. While an appeal to the Courts-Martial Appeal Court was open to Mr Coyne, the Court concluded that the organisational defects in the court-martial could

not be corrected by any subsequent review procedure because an accused faced with a serious criminal charge is entitled to a first instance tribunal which meets the requirements of Article 6 § 1 of the Convention.

24. The Court subsequently found a violation of Article 6 § 1 on the same basis in a series of cases involving complaints about the independence and impartiality of army and air force district and general courts-martial convened pursuant to the Army and Air Force Acts 1955 (*Cable and Others v. the United Kingdom* [GC], no 24436/94 *et seq.*, 18 February 1999).

25. In the present case, the Court recalls that a general army court-martial was convened pursuant to the Army Act 1955 to try the applicant. It finds no reason to distinguish the present case from those of Mr Findlay, Mr Coyne or of Mr Cable and Others as regards the part played by the convening officer in the organisation of his court-martial. Accordingly, the Court considers that the applicant's court-martial did not meet the independence and impartiality requirements of Article 6 § 1 of the Convention. The Court also considers that, since the applicant was faced with, *inter alia*, charges of a serious and criminal nature and was therefore entitled to a first instance tribunal complying with the requirements of Article 6 § 1, such organisational defects in his court-martial could not be corrected by any subsequent review procedure.

26. Accordingly, and for the reasons expressed in detail in the above-cited judgment of the Court in Mr Findlay's case, the Court concludes that the court-martial which dealt with the applicant's case was not independent and impartial within the meaning of Article 6 § 1 of the Convention.

27. The Court is further of the opinion that, since the applicant's court-martial has been found to lack independence and impartiality, it could not guarantee the applicant a fair trial (*Smith and Ford v. the United Kingdom*, no. 37475/97, 29 September 1999, § 25, *Moore and Gordon v. the United Kingdom*, no. 39036/97, 29 September 1999, § 24, and *Wilkinson and Allen v. the United Kingdom*, nos. 31145/96 and 35580/97, 6 February 2001, § 26).

C. Remaining points at issue

28. The applicant also complained that his court-martial was not "established by law" within the meaning of Article 6 § 1 of the Convention.

29. In view of its conclusions at paragraphs 26 and 27 above, the Court finds that it is unnecessary also to examine these complaints of the applicant.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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. Damage

31. The applicant did not claim to have suffered any pecuniary loss.

32. He sought 7,500 pounds sterling (GBP) in compensation for the non-pecuniary loss suffered as a result of the violations of his rights guaranteed by Article 6 § 1 of the Convention.

33. The Government observed that there was no evidence that the outcome of the court-martial would have been any different had the court-martial been otherwise constituted.

34. The Court recalls that in the Findlay judgment it decided not to award compensation for pecuniary or non-pecuniary damage on the ground that it was impossible to speculate as to the outcome of the court-martial proceedings had the violation of the Convention not occurred (the Findlay judgment at §§ 85 and 88, and the Coyne judgment at § 62).

The Court, accordingly, considers that it would not be justified in awarding compensation for the alleged non-pecuniary loss of the present applicant, since no causal link has been established between any such loss and the breach of the Convention established.

35. The Court therefore considers that the finding of a violation in itself constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

36. The applicant requested reimbursement of his legal costs and expenses in the sum of GBP 1,000 and the Government considered the sum claimed reasonable, if it was taken as a sum inclusive of value-added tax.

37. The Court recalls that it has found a violation of Article 6 § 1 of the Convention and considers it appropriate, in the circumstances of the case, to award the sum claimed by the applicant in costs and expenses. Since the applicant did not specify whether the sum claimed was inclusive or exclusive of value-added tax, the Court awards GBP 1,000 inclusive of any value-added tax which may be chargeable.

C. Default interest

38. According to the information available to the Court, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment is 7.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, for costs and expenses 1,000 (one thousand) pounds sterling, inclusive of any value-added tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 5 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President