



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

THIRD SECTION

CASE OF PRICE v. THE UNITED KINGDOM

(Application no. 33394/96)

JUDGMENT

STRASBOURG

10 July 2001

FINAL

10/10/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Price 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 12 September 2000 and 19 June 2001,

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

PROCEDURE

1. The case originated in an application (no. 33394/96) against the United Kingdom of Great Britain and Northern Ireland lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, Ms Adele Ursula Price (“the applicant”), on 23 July 1996.

2. The applicant, who was granted legal aid, was represented before the Court by Mr P. Bloom, a lawyer practising in Spilsby, Lincolnshire. The United Kingdom Government (“the Government”) were represented by their Agent, Ms H. Fieldsend, of the Foreign and Commonwealth Office.

3. The applicant alleged that her committal to prison and her treatment in detention violated Article 3 of the Convention.

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). It 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.

5. By a decision of 12 September 2000 the Chamber declared the application admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

6. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is four-limb deficient as a result of phocomelia due to thalidomide. She also suffers from problems with her kidneys. On 20 January 1995, in the course of civil proceedings in Lincoln County Court for recovery of a judgment debt, she refused to answer questions put to her concerning her financial position and was committed to prison for seven days for contempt of court. In the applicant's recollection, the judge ordered that she should be taken directly to Wakefield Prison. Before leaving the court the applicant asked a court officer if she could take the battery charger for her wheelchair with her. She alleges that the officer told her that this would be considered a luxury item and that she would not, therefore, be able to bring it.

8. Because the applicant's case had been heard during the afternoon of 20 January 1995, it was not possible to take her to prison until the next day and she spent that night in a cell in Lincoln Police Station. This cell, which contained a wooden bed and a mattress, was not specially adapted for a disabled person. The applicant alleges that she was forced to sleep in her wheelchair since the bed was hard and would have caused pain in her hips, that the emergency buttons and light switches were out of her reach, and that she was unable to use the toilet since it was higher than her wheelchair and therefore inaccessible.

9. The custody record states that on arrival, at 7.20 p.m., the applicant informed the custody officer that she suffered from kidney trouble and a recurring ear infection but that she did not require any medication or to see a doctor at that time. At 7.50 p.m. she declined a meal and a hot drink. At 8.50 p.m. the applicant said she was cold so the officer wrapped her in two blankets. When she was checked on again at 9.15 p.m. the applicant was still complaining of being cold. At 9.35 p.m., since she was still cold and had a headache caused by the cold, another blanket was wrapped around her. She was offered a hot drink which she refused. The applicant was asleep at 10 p.m., but by 10.50 p.m. she was awake again, complaining about the cold, and again refused a hot drink. At 11.15 p.m. she asked to see a doctor, who arrived at 11.50 p.m. The doctor's note of his examination of the applicant at 12.35 a.m. states:

“Patient complained of feeling cold, headache and queasy (no food since admission – offered but refused). Talking quite sensibly, not obviously hypothermia, seated in wheelchair. Tells me unable to lie flat and sleeps on sofa, sitting up, at home. On Erythromycin for ear infection. On examination ears NAD Nystigmus J36. Unfortunately the facilities available in the cells for this type of disabled person (*sic*). Really requires a room temp in the high 70's as not moving/not able to move around.

Insulated with 'space blanket' and extra blankets.
Offered/given Paracetamol and [bn] stemetil as no co-proxamol available.”

10. According to the custody record, the applicant slept until 7 a.m., when she was moved to another cell and offered food and drink, which she refused. At 8.30 a.m. she was taken to New Hall Women's Prison, Wakefield, where she was detained until the afternoon of 23 January 1995.

11. The applicant was not placed in a normal cell in New Hall, but was instead detained in the prison's health care centre. Her cell had a wider door for wheelchair access, handles for the disabled in the toilet recess and a hydraulic hospital bed. On arrival at the prison the applicant completed a medical questionnaire. She stated that she had health worries but that they were “under control – takes it as it comes”. Staff Nurse Broadhead, who countersigned the questionnaire, wrote:

“Admitted into hospital mainly for mobility problems. Inmate has thalidomide and uses an electric wheelchair which would be difficult to use in the main prison due to steps e.g. to dining room. Has not brought chair charger with her as she says police wouldn't let her.

She suffers from urological problems and has intermittent renal failure ... Is able to feed herself if food is cut up, is able to use cup. Manages on and off the toilet to P.U. [pass urine] but will need assistance with B.O. [opening bowels] in order to clean herself.

Usually sleeps on a couch at home and her dog helps her up during the night. Will need assistance here during the night to get off bed to use the toilet. Will try to use the hospital bed with backrest out. Contacted Dr Rhodes re help for night nurse. Memo done to Night Orderly Officer and Security re assistance at night and need to unlock ...

She is allergic to many antibiotics ... Needs frequent changes of clothes due to urinary problems.

Has settled into unit and eaten dinner.

PS: Cannot be lifted in normal fashion as she has a persistently dislocated shoulder due to an old injury.”

12. The applicant was examined by Dr Kidd, whose notes stated:

“New reception.

Thalidomide victim with numerous deformities including absent arms upper/lower with dislocating L shoulder and no use in R upper limb. Both lower limbs are absent with small feet.

Bladder – is unable to empty completely and gets frequent retentions (when she needs catheterisation) and infection ...

Bowels – ... unable to manually clean herself.

At home she is relatively independent tho' has numerous services including electric wheelchair – which may need recharging over W/E [weekend].

In hospital has difficulty with

bed – too high
 sink – unable to reach
 mobility – battery running down
 fluid intake – likes to take juice and there is none
 diet – vegetarian
 general hygiene – needs help ...

Needs: fluid intake
 batteries recharged
 adequate temperature ...”

13. A “continuous medical record” on the applicant was kept during her detention. The first entry, dated 21 January 1995, stated:

“I asked duty Governor, Mr Ellis, to give permission for a battery charger for Adele's wheelchair to be brought in if we could arrange it. He agreed to this and whilst here we pointed out the numerous problems staff may encounter with this inmate i.e.

(1) Needs lifting in and out of bed and she says this is usually done by one person standing behind her with arms around her midriff then lifting her either onto the bed or onto her wheelchair.

(2) She has, at home, a device worked by compression that gets her in and out of the bath. If she doesn't have a daily bath she risks developing sores, especially where her foot lies across her 'leg'.

(3) Because of recurrent urinary infections she should take two litres of fluid daily but usually has juice and doesn't like water, therefore will probably reduce her fluid intake. After some consideration Mr Ellis decided that if we could find Adele a suitable place in outside hospital he would licence her to go, but we do not have any medical condition to admit her to hospital with. Dr Kidd will review Adele tomorrow, as he thinks there is a likelihood she will develop a UTI [urinary tract infection].”

14. The nurses who cared for the applicant during her detention kept a contemporaneous record, which stated for the night of 21 January 1995:

“Impossible to toilet during the night. Have been into Adele's cell twice. Took over 1/2 hour to toilet her then could not get her back on the bed. Given analgesia and she is getting a great deal of pain through lying on a solid mattress. Very difficult to care for her with one nurse.”

15. The applicant alleged that on the evening of 21 January 1995 she was lifted onto the toilet by a female prison officer, but was then left sitting on the toilet for over three hours until she agreed to allow a male nursing officer to clean her and help her off the toilet. The Government submitted that on 21 January 1995 there was only one female nurse on duty, Nurse Lister, and that she enlisted the help of two male members of staff, Senior Officer Tingle and Officer Bowman, and that the two male members of staff

assisted Nurse Lister in sitting the applicant up and then left the room while the applicant moved her bowels. Nurse Lister then cleaned the applicant and laid her back down. It is unclear from the Government's submissions whether Senior Officer Tingle and Officer Bowman were nursing staff or whether they were prison officers without nursing qualifications. The applicant further claimed that later that evening, a female nurse who was assisting her onto the toilet removed her bedclothes in the presence of two male prison nursing officers, thereby exposing her, naked from the chest down, to the male officers. The Government denied that these incidents occurred. They pointed out that prior to her release the applicant made a complaint to the prison governor concerning the lack of adequate facilities, but containing no mention of the above events.

16. An agency nurse was employed to care for the applicant during the night of 22 to 23 January 1995. The entries in the nursing record for 22 January stated:

“Says she finds bed uncomfortable and there is a risk of her developing bed sores, but she is not completely immobile and is able to shift her weight about the bed. No problems with diet but fluid intake diminished due to her not liking water. There is a need for us to separate Adele's little whims from her genuine problems.

Bowels opened, says she's in retention and has not PU'd [passed urine] since 01.00 hours, refusing to drink water, refuses to get ready for bed until 8 p.m.

Night – 21.50 asked to be put to bed. When asked why she was not in bed says day staff said agency nurse was going to wash her and put her to bed.

23.10 asked to be moved as she was having pains in 'legs'. Coproxamol given and sat up. Settled and slept later. Has not PU. Has been drinking.”

17. The remission provisions in sections 45 and 33 of the Criminal Justice Act 1991 meant that the applicant had only to serve half the sentence imposed, namely, three and a half days. Prior to her release, on 23 January 1995, the applicant was examined by Dr Kidd who found she needed catheterising due to urine retention. The medical record stated:

“For release this afternoon as soon as transport arrangements can be made. ...

To have bath and bladder emptied via catheter before leaving.

When asked if she had any specific medical complaints – she only asked for a bath and to be catheterised.

She had some complaints about her sleeping arrangements. Said that Gv. Mr Ellis had said that she could sleep on a chair and have her cell door open all night. Given that she is due for release today she said her Governor's application was immaterial. ...”

18. The applicant was collected from prison by a friend. She claimed to have suffered health problems for ten weeks as a result of her treatment in

detention, but has not provided direct medical evidence in support of this claim.

19. On 30 January 1995 the applicant consulted solicitors with a view to bringing an action in negligence against the Home Office. She was granted legal aid, limited to obtaining evidence and seeking counsel's opinion as to merits and quantum. In his opinion dated 6 March 1996, her counsel referred to the difficulties which the applicant was likely to face in proving that she had suffered the ill-treatment which she alleged, and referred to a judgment of the High Court (*Knight and Others v. Home Office and Another* [1990] 3 All England Law Reports 237) which held that, given the lack of resources, the standard of care required of a prison hospital was lower than that which would be required in an equivalent outside institution. Counsel advised that, in the light of this case-law and the difficulties of proof which she faced, the applicant had a limited prospect of success in her claim and that, even if successful, damages were not likely to exceed 3,000 pounds sterling. In the light of this advice, the applicant's legal aid certificate was discharged on 13 May 1996.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. It is not normal practice for the County Court to give any direction as to where a particular defendant should be detained. Section 12(1)-(2) of the Prison Act 1952 provides that it is for the Secretary of State to allocate a prisoner to any prison:

“12 (1) A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise, may be lawfully confined in any prison.

(2) Prisoners shall be committed to such prisons as the Secretary of State may from time to time direct, and may by the direction of the Secretary of State be removed during the term of their imprisonment from the prison in which they are confined to any other prison.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicant alleged that her committal to prison and treatment in detention violated Article 3 of the Convention, which provides as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

22. The Government submitted that with the passage of time it was impossible to establish whether or not any indication had been given by the sentencing judge as to where the applicant should be detained, although it was not normal practice for the County Court to give any such direction. The police and prison authorities had direct knowledge of the facilities available in police stations and prisons and it was, therefore, more appropriate for the courts to leave allocation decisions to these bodies. Even if the judge did not directly consider the applicant's special needs, this could not in itself amount to a breach of Article 3 unless there was a real risk of serious ill-treatment, which did not arise in the applicant's case.

The treatment the applicant received while in detention fell considerably short of the minimum level of severity necessary to raise an issue under Article 3. Thus, her special circumstances were recognised on her reception at New Hall and she was placed in the health care centre, with access to nursing staff who took appropriate measures to ensure that her needs were met with regard to food, drink and hygiene. The Government denied that the applicant was attended to by a male officer or was subjected to any humiliating or degrading treatment as a result of exposure to male officers, and reminded the Court that, according to its case-law, it is for the applicant to prove the substance of her allegations beyond reasonable doubt.

23. The applicant submitted that the sentencing judge was well aware of her health problems but nonetheless decided to commit her to prison without first ensuring that there would be adequate facilities. At the police station she was detained in cold conditions which provoked a kidney infection. Her cell in the prison health care centre was not adapted to her needs, as was recognised by the prison doctor who examined her on admission, and the nurses and prison officers who cared for her were unsympathetic and did little to help. Throughout the period of her detention she had been subjected to inhuman and degrading treatment which had left her with physical and psychological scars.

24. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.

In considering whether treatment is “degrading” within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III).

25. In this case the applicant, a four-limb-deficient thalidomide victim with numerous health problems including defective kidneys, committed contempt of court in the course of civil proceedings and was ordered by a

judge to be detained for seven days (although, as a result of the rules on remission of sentences, she was in fact detained for three nights and four days). It appears that, in accordance with English law and practice, the sentencing judge took no steps, before committing the applicant to immediate imprisonment – a particularly harsh sentence in this case – to ascertain where she would be detained or to ensure that it would be possible to provide facilities adequate to cope with her severe level of disability.

26. The applicant and the Government have submitted different accounts of the treatment she received while in detention and, so long after the event and in the absence of any findings by the domestic courts, it is difficult to establish in detail precisely what occurred. However, the Court considers it significant that the documentary evidence submitted by the Government, including the contemporaneous custody and medical records, indicate that the police and prison authorities were unable adequately to cope with the applicant's special needs.

27. During her first night of detention the applicant was kept in a cell in a local police station because it was too late in the day to take her to prison. The custody record shows that she was complaining of the cold every half hour – a serious problem for the applicant who suffered from recurring kidney problems and who, because of her disability, could not move around to keep warm. Finally, a doctor was called, who noted that the applicant could not use the bed and had to sleep in her wheelchair, that the facilities were not adapted to the needs of a disabled person and that the cell was too cold. The Court notes, however, that despite the doctor's findings no action was taken by the police officers responsible for the applicant's custody to ensure that she was removed to a more suitable place of detention, or released. Instead, the applicant had to remain in the cell all night, although the doctor did wrap her in a space blanket and gave her some painkillers.

28. The following day the applicant was taken to Wakefield Prison, where she was detained for three days and two nights. During her first night's detention the nursing record states that the duty nurse was unable to lift the applicant alone and thus had difficulty in helping her use the toilet. The applicant submits that, as a result, she was subjected to extremely humiliating treatment at the hands of male prison officers. The Government deny her account, but nonetheless it seems clear that male officers were required to assist in lifting the applicant on and off the toilet.

29. The Court observes that there are notes in the applicant's admission records by a doctor and staff nurse expressing concern over the problems that were likely to be encountered during her detention, including reaching the bed and toilet, hygiene and fluid intake, and mobility if the battery of her wheelchair ran down. Such was the concern that the prison governor authorised staff to try and find the applicant a place in an outside hospital. In the event, however, they were unable to transfer her because she was not suffering from any particular medical complaint. By the time of her release

the applicant had to be catheterised because the lack of fluid intake and problems in getting to the toilet had caused her to retain urine. She claims to have suffered health problems for ten weeks thereafter, but has supplied no medical evidence to support this.

30. There is no evidence in this case of any positive intention to humiliate or debase the applicant. However, the Court considers that to detain a severely disabled person in conditions where she is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constitutes degrading treatment contrary to Article 3 of the Convention. It therefore finds a violation of this provision in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed still to suffer the emotional and psychological consequences of her ill-treatment in detention, and asked the Court to award her 50,000 pounds sterling (GBP) as compensation for non-pecuniary damage.

33. The Government submitted that the applicant's claim was wholly excessive and unreasonable, particularly since no evidence had been provided to substantiate her allegations of continuing trauma. They reasoned that the finding of a violation would be adequate just satisfaction.

34. The Court, bearing in mind its above findings with regard to the ill-treatment suffered by the applicant, considers that she suffered some non-pecuniary damage as a result of her detention, which cannot be compensated solely by the finding of a violation (see *Peers*, cited above, § 88). In determining the amount of the award it has regard, *inter alia*, to the facts that there was no intention to humiliate or debase the applicant and that she was deprived of her liberty for a relatively short period of time. In light of all the circumstances, it awards GBP 4,500 under this head.

B. Costs and expenses

35. The applicant claimed legal costs and expenses of GBP 4,000 for the Convention proceedings. The Government made no comments in relation to this claim.

36. The Court considers that the applicant's claim for costs is reasonable and awards it in full, plus any value-added tax which may be chargeable, less the amounts already paid in legal aid by the Council of Europe.

C. Default interest

37. 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 3 of the Convention;
2. *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, the following amounts, plus any value-added tax that may be chargeable;
 - (i) GBP 4,500 (four thousand five hundred pounds sterling) in respect of non-pecuniary damage;
 - (ii) GBP 4,000 (four thousand pounds sterling) in respect of costs and expenses, less FRF 5,300 (five thousand three hundred French francs) to be converted into pounds sterling at the rate of exchange applicable on the date of delivery of this judgment;
 - (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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) separate opinion of Sir Nicolas Bratza joined by Mr Costa;
- (b) separate opinion of Mrs Greve.

J.-P.C.
S.D.

SEPARATE OPINION OF JUDGE BRATZA
JOINED BY JUDGE COSTA

I fully agree that there has been a violation of the applicant's rights under Article 3 of the Convention and only wish to make clear that in my view the primary responsibility for what occurred lies not with the police or with the prison authorities who were charged with the care of the applicant during her period of detention, but with the judicial authorities who committed the applicant to an immediate term of imprisonment for contempt of court.

While there appear on the material before the Court to have been certain failings in the standard of care provided by the police and prison authorities, these stemmed in large part from the lack of preparedness on the part of both to receive and look after a severely handicapped person in conditions which were wholly unsuited to her needs. On the other hand, I can see no justification for the decision to commit the applicant to an immediate term of imprisonment without at the very least ensuring in advance that there existed both adequate facilities for detaining her and conditions of detention in which her special needs could be met.

SEPARATE OPINION OF JUDGE GREVE

I fully agree with my colleagues that there has been a violation of the applicant's rights under Article 3 of the Convention. Since, in my opinion, however, the case raises serious and also new issues within a core area of the Court's mandate, I would like to add a few points.

In this case there is a lack of immediate compatibility between the applicant's situation as such and detention in any ordinary prison facility. The applicant is confined to her wheelchair and has an extensive need for assistance, to the extent that at night she is unable to move enough to keep a normal human body temperature if the room in which she stays is not specially heated or, as *in casu*, she is not wrapped, not just in blankets, but in a space blanket.

In this the applicant is different from other people to the extent that treating her like others is not only discrimination but brings about a violation of Article 3. As for the prohibition of discrimination, see *Thlimmenos v. Greece* ([GC], no. 34369/97, § 44, ECHR 2000-IV), which reads:

“The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification ... However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”

It is obvious that restraining any non-disabled person to *the applicant's level of ability to move and assist herself*, for even a limited period of time, would amount to inhuman and degrading treatment – possibly torture. In a civilised country like the United Kingdom, society considers it not only appropriate but *a basic humane concern* to try to improve and compensate for the disabilities faced by a person in the applicant's situation. In my opinion, these compensatory measures come to form part of the disabled person's physical integrity. It follows that, for example, to prevent the applicant, who lacks both ordinary legs and arms, from bringing with her the battery charger to her wheelchair when she is sent to prison for one week, or to leave her in unsuitable sleeping conditions so that she has to endure pain and cold – the latter to the extent that eventually a doctor had to be called – is in my opinion a violation of the applicant's right to physical integrity. Other events in the prison amount to the same.

The applicant's disabilities are not hidden or easily overlooked. It requires no special qualification, *only a minimum of ordinary human empathy*, to appreciate her situation and to understand that to avoid unnecessary hardship – that is, hardship not implicit in the imprisonment of

an able-bodied person – she has to be treated differently from other people because her situation is significantly different.

As the Court has found, Article 3 has been violated in this case. In my opinion, everyone involved in the applicant's imprisonment – the judge, police and prison authorities – contributed towards this violation. Each of them could and should have ensured that the applicant was not put into detention until special arrangements had been made such as were needed to compensate for her disabilities, arrangements that would have ensured that her treatment was equivalent to that of other prisoners. The failure to take these steps foreseeably gave rise to violations of the applicant's personal integrity – physical and psychological – as well as to inhuman and degrading treatment.

The treatment to which the applicant was subjected moreover violated not only specific provisions but the entire spirit of the Standard Minimum Rules for the Treatment of Prisoners (adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders).