



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

FOURTH SECTION

CASE OF ARMSTRONG v. THE UNITED KINGDOM

(Application no. 48521/99)

JUDGMENT

STRASBOURG

16 July 2002

FINAL

16/10/2002

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 Armstrong v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr M. PELLONPÄÄ, *President*,

Sir Nicolas BRATZA,

Mr A. PASTOR RIDRUEJO,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 2 July 2002,

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

PROCEDURE

1. The case originated in an application (no. 48521/99) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a United Kingdom national, Mr Mark Armstrong ("the applicant"), on 17 May 1997.

2. The applicant was represented before the Court by Ms B. Petherbridge of Kingsley Napley, solicitors, London. The United Kingdom Government ("the Government") were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office, London.

3. The applicant complained principally about covert audio surveillance carried out by the police and the lack of effective remedy for these matters.

4. 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.

5. On 10 October 2000 the Court declared inadmissible the part of the application relating *inter alia* to the fairness of his trial. On 25 September 2001, the Chamber declared the application partly admissible insofar as it concerned the use of a covert surveillance device, the remainder of the application being rejected as inadmissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court). The above application was transferred to the newly composed Fourth Section (Rule 52 § 1).

7. The applicant but not the Government filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 27 April 1995, the applicant was arrested and charged on two counts with conspiracy to supply Class A and Class B drugs respectively. On 27 January 1997, he and his co-defendants (Kevin Douglas, Paul Anthony Easingwood, Keith Gleeson and Andrew David Dalton) pleaded guilty to the charges after the trial judge ruled disputed evidence admissible.

9. The evidence at issue resulted from a covert surveillance operation involving observation and recording of conversations in the home of Kevin Douglas allegedly from October 1994 until January 1995 and in April 1995. According to the applicant, the authority for such surveillance had been sought and granted on the purported grounds that the drug operation conducted by the defendants was of such sophistication that conventional evidence gathering techniques were fruitless. He claimed that it was not the Chief Constable who authorised the warrant, but rather the Chief Superintendent.

10. The defendants challenged the admissibility of the evidence on grounds of improper compliance with the Home Office Guidelines and argued that the judge should exercise his discretion under section 78 of the Police and Criminal Evidence Act 1984 (“PACE”) to exclude the recordings. A *voir dire* regarding the assertions was conducted. The taped conversations constituted the sole evidence against the applicant.

11. Upon the trial judge's ruling that the evidence was admissible, the defendants pleaded guilty to the relevant charges on the indictment.

12. On 6 February 1997, the applicant was sentenced to nine years' imprisonment.

13. The applicant applied for leave to appeal against conviction and sentence out of time. On 28 January 1999, the applicant's application to seek leave to appeal against conviction and sentence out of time was refused by Mr Justice Hooper and Lord Justice Rose.

II. RELEVANT DOMESTIC LAW AND PRACTICE

The Home Office Guidelines

14. Guidelines on the use of equipment in police surveillance operations (The Home Office guidelines of 1984) provide that only chief constables or assistant chief constables are entitled to give authority for the use of such devices. The Guidelines are available in the library of the House of

Commons and are disclosed by the Home Office on application. They provide, *inter alia*:

“4. In each case, the authorising officer should satisfy himself that the following criteria are met:

the investigation concerns serious crime;

normal methods of investigation must have been tried and failed, or must from the nature of things, be unlikely to succeed if tried;

there must be good reason to think that use of the equipment would be likely to lead to an arrest and a conviction, or where appropriate, to the prevention of acts of terrorism;

use of equipment must be operationally feasible.

In judging how far the seriousness of the crime under investigation justifies the use of a particular surveillance technique, authorising officers should satisfy themselves that the degree of intrusion into the privacy of those affected is commensurate with the seriousness of the offence.”

15. The Guidelines also state that there may be circumstances in which material so obtained could appropriately be used in evidence at subsequent court proceedings.

The Police Act 1997

16. The 1997 Act provides a statutory basis for the authorisation of police surveillance operations involving interference with property or wireless telegraphy. The relevant sections relating to the authorisation of surveillance operations, including the procedures to be adopted in the authorisation process, entered into force on 22 February 1998.

17. Since 25 September 2000, these controls have been augmented by Part II of the Regulation of Investigatory Powers Act 2000 (“RIPA”). In particular, covert surveillance in a police cell is now governed by sections 26(3) and 48(1) of RIPA. RIPA also establishes a statutory Investigatory Powers Tribunal to deal with complaints about intrusive surveillance and the use of informants by the police.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

18. The applicant invoked Article 8 of the Convention in respect of the use of a covert surveillance device by the police to record conversations at the flat of Kevin Douglas. Article 8 provides insofar as relevant:

“1. Everyone has the right to respect for his private ... life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

19. The Government accepted, following the judgment in *Khan v. the United Kingdom* (no. 35394/97, [Section 3], ECHR 2000-V, judgment of 12 May 2000, §§ 26-28) that the use of the audio recording device amounted to an interference with the applicant's right to private life under Article 8 § 1 of the Convention and that the measures were not used “in accordance with law” within the meaning of Article 8 § 2 of the Convention.

20. The Court recalls, as in the above-mentioned *Khan* case, that at the relevant time there existed no statutory system to regulate the use of covert recording devices by the police. The interferences disclosed by the measures implemented in respect of the applicant were therefore not “in accordance with the law” as required by the second paragraph of Article 8 and there has accordingly been a violation of this provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

21. The applicant complained that he did not have an effective remedy concerning the surveillance measures implemented against him, invoking Article 13 of the Convention which provides:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

22. The Government accepting that the applicant did not enjoy an effective remedy in domestic law at the relevant time in respect of the violations of his right to private life under Article 8, the Court finds that there has been a violation of Article 13 of the Convention in this regard.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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.”

24. The applicant, who was legally aided, was requested on 28 September 2001 and on 13 March 2002 to submit details of his claim for just satisfaction. On the latter date, he was requested to provide those details by 3 April 2002. No details have been lodged by the date of this judgment. In the circumstances, the Court finds no basis on which to make an award in this case and considers that the finding of a violation of the Convention may be regarded as constituting sufficient just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;
2. *Holds* that there has been a violation of Article 13 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President