



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

FOURTH SECTION

CASE OF DAVIES v. THE UNITED KINGDOM

(Application no. 42007/98)

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 Davies 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,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 26 September 2000, 23 October 2001 and 2 July 2002,

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

PROCEDURE

1. The case originated in an application (no. 42007/98) 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 United Kingdom national, Vernon John Davies ("the applicant"), on 29 October 1997.

2. The applicant was represented before the Court by Ms J. Rickards and Mr J.P. Gardner, solicitors practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Ms Helen Upton, Foreign and Commonwealth Office.

3. The applicant alleged, in particular, a breach of his right under Article 6 § 1 to a fair hearing within a reasonable time.

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 originally allocated to the Third Section of the Court, which declared it partly inadmissible on 26 September 2000. On 23 October 2001 the Third Section declared the application admissible insofar as the applicant complained about the length of the "Blackspur" proceedings, and declared the remainder of the application inadmissible.

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

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*). On 15 April 2002 the Government submitted observations in connection with the applicant's claims under Article 41 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The Blackspur group of companies (collectively, “Blackspur”), was formed by the applicant and others in September 1987 and at various times the applicant acted as director and chairman. Blackspur went into receivership in July 1990 with an estimated deficit of GBP 34 million.

9. On 1 July 1992, on the last day of the applicable two year limitation period, the Secretary of State for Trade and Industry (“the Secretary of State”) issued proceedings against the applicant and four others (“the Blackspur proceedings”) under section 6 of the Company Directors Disqualification Act 1986 (“the CDDA”: see paragraphs 19-20 below).

10. The Secretary of State's evidence was not complete at the time he commenced proceedings, and he applied for an extension of time for the serving of evidence (see paragraph 21 below). The applicant refused to consent to an extension being granted and instead, on 13 October 1992, together with two other defendants, applied to strike out the proceedings.

11. The Secretary of State's evidence was completed and served on the applicant on 14 December 1992. The application for permission to file the evidence out of time, and the cross-application to strike out the proceedings, were not heard by the Registrar until 20 May 1993, when they were adjourned to 29 July 1993. On 27 January 1994 the Registrar granted the Secretary of State's application for an extension of time and dismissed the applicant's strike-out application. The applicant appealed to the High Court.

12. Related criminal charges had been brought against the four other defendants in the Blackspur proceedings, but not the applicant, on 1 July 1992. The criminal trial took place between March and June 1994, during which period the disqualification proceedings were adjourned generally, with liberty to restore. At the conclusion of the criminal trial, two defendants were acquitted and two were convicted. On appeal, the two convictions were quashed in February 1995.

13. By letters dated 19 July and 16 September 1994 the defendants to the Blackspur disqualification proceedings wrote to the Secretary of State inviting him to reconsider whether to carry on with the proceedings. On 15 December 1994 the Treasury Solicitor replied that the Secretary of State had decided that it remained expedient in the public interest to continue.

14. Once the criminal trial had been concluded, the applicant's appeal to the High Court against the Registrar's decision of 27 January 1994 could proceed and was dismissed on 2 May 1995. In November 1995 the applicant was granted leave to appeal out of time to the Court of Appeal, and his substantive appeal was dismissed by that court on 24 May 1996. The Court of Appeal found that the reasons for the Secretary of State's failure to complete his evidence before the proceedings were commenced had been "far from satisfactory", but considered nonetheless that the case should proceed since it was in the public interest to determine the "particularly serious" allegations of false accounting and trading while insolvent made against the defendants. In addition, the court observed that the delay by the Secretary of State had not affected the timing of the hearing or prejudiced the applicant, and that, once the proceedings had commenced, "the respondents' main concern was to delay the proceedings until after the conclusion of the criminal trial, not to hurry them on".

15. On 1 July 1996 the Registrar directed that the defendants should serve their evidence in response to that of the Secretary of State by 29 November 1996. That order was not complied with, and on 9 December 1996 the Registrar ordered that if the defendants had not served their evidence by 17 January 1997, they would be debarred from adducing any evidence.

16. The defendants served their evidence on 17 January 1997. On 20 January 1997 the Registrar directed that the Secretary of State should serve his evidence in reply by 17 March 1997. On 14 April 1997 the Registrar granted the Secretary of State a time-extension for the serving of evidence in reply until 30 June 1997, and this evidence was in fact served on 10 July 1997. At a further directions hearing on 4 August 1997 the defendants were given permission to adduce additional evidence in rejoinder by 1 December 1997. The applicant failed to comply with this order and on 8 December 1997 he was granted an extension of time until 9 February 1998.

17. In the event, however, the Blackspur proceedings against the applicant were discontinued on 12 January 1998, after a "Carecraft" agreement (see paragraph 23 below) was reached between the applicant and the Secretary of State in other proceedings under the CDDA. As part of the settlement, the applicant agreed to pay the Secretary of State's costs of GBP 94,000.

II. RELEVANT DOMESTIC LAW

18. The Company Directors Disqualification Act 1986 (“the CDDA”) empowers the court, in specified circumstances, to disqualify a person from being a director, liquidator or administrator of a company, a receiver or manager of a company's property or in any way, whether directly or indirectly, to be concerned in the promotion, formation or management of a company for a specified period starting from the date of the order (section 1(1)).

19. Under section 6 of the Act, it is the duty of the court to make a disqualification order against a person,

“... in any case where, on an application under this section, it is satisfied - (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and, (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.”

The minimum period of disqualification under this section is two years, and the maximum is fifteen years.

20. Section 7(1) of the CDDA provides, *inter alia*, that the Secretary of State may apply for a section 6 order to be made against a person if it appears to the Secretary of State that such an order would be expedient in the public interest. Under section 7(2), proceedings under section 6 may not be commenced more than two years after the insolvency of the company.

21. Rule 3 of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 reads as follows:

“(1) There shall, at the time when the summons is issued, be filed in court evidence in support of the application for a disqualification order, and copies of the evidence shall be served with the summons on the respondent.

(2) The evidence shall be by one or more affidavits, except where the applicant is the official receiver, in which case it may be in the form of a written report (with or without affidavits by other persons) which shall be treated as if it had been verified by affidavit by him and shall be prima facie evidence of any matter contained in it.

(3) There shall in the affidavit or affidavits or (as the case may be) the official receiver's report be included a statement of the matters by reference to which the respondent is alleged to be unfit to be concerned in the management of a company.”

THE LAW

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

22. The applicant complained about the length of the proceedings against him under Article 6 § 1 of the Convention which provides, as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

23. The Government submitted that the Blackspur proceedings were extremely complex. They commenced on 1 July 1992 and ended on 12 January 1998. The Government attributed a substantial proportion of the delay to the applicant's unsuccessful attempts to strike out the proceedings and his refusal to consent to the Secretary of State's late filing of evidence. Further delay was inevitably caused by the criminal proceedings.

It had been open to the applicant to agree to a “Carecraft” settlement at any time during the course of the proceedings. This procedure, named after the case of *Re Carecraft Construction Co. Ltd* [1994] 1 WLR 172, allowed the parties to proceedings under the CDDA to submit to the court an agreement that a disqualification order should be made for a specified period on the basis of undisputed (but not necessarily agreed) facts. Instead of adopting this procedure, the applicant delayed the proceedings by attempting to persuade the Secretary of State to accept his undertaking not to act as a company director.

24. The applicant submitted that he could not be held responsible for the delays in the proceedings. He pointed out that, despite the fact that the proceedings were commenced on the very last day of the two year limitation period, the Secretary of State had failed to comply with the requirement to file his evidence at the same time, and therefore needed the leave of the court to file it out of time. That application, together with the applicant's cross-application to have the proceedings struck out, was first before the court on 20 May 1993, when it was adjourned to 29 July 1993, and again until 27 January 1994, that is, over a year and a half after the proceedings were commenced. The applicant appealed against the Registrar's decision, but the appeal was adjourned pending the criminal trial of his co-defendants. At the conclusion of the trial the applicant and his co-defendants wrote to the Secretary of State asking whether he still wished to pursue the disqualification proceedings; the Secretary of State took five months to reply to that letter. The applicant's appeal was not therefore heard by the High Court until 2 May 1995 (15 months after the Registrar's decision). The

applicant then appealed to the Court of Appeal, which, in its judgment on 24 May 1996, found that the Secretary of State's reasons for failing to file his evidence in time were "far from satisfactory". The proceedings were finally concluded only when the applicant agreed to make various admissions so as to reach a "Carecraft" settlement in other proceedings against him under the CDDA. By that time the Blackspur proceedings had lasted five and a half years, coming to an end almost seven and a half years after the events on which they were based.

25. As regards the applicability of Article 6 § 1, it was not disputed between the parties that the proceedings under the CDDA determined "civil rights and obligations" and the Court is of the same opinion (see also D.C., H.S. and A.D. v. the United Kingdom (dec.), no. 39031/97, 14 September 1999, unpublished, and E.D.C. v. the United Kingdom (Commission Report), no. 24433/94, 26 February 1997, unpublished).

26. The Court recalls that the reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case, having regard in particular to its complexity and the conduct of the parties to the dispute and of the relevant authorities (see, among many other authorities, the *Robins v. the United Kingdom* judgment of 23 September 1997, *Reports of Judgments and Decisions* 1997-V, § 33). In the present case, the Court must also bear in mind that, given that the applicant was a company director and that disqualification proceedings would have had a considerable impact on his reputation and his ability to practise his profession, special diligence was called for in bringing the proceedings to an end expeditiously (see the above-mentioned E.D.C. Report).

27. The Blackspur proceedings, at issue in this case, commenced on 1 July 1992 when, on the last day of the statutory two-year time-limit, the Secretary of State issued a summons against the applicant and four others (see paragraph 9 above). The proceedings came to an end on 12 January 1998, when they were discontinued following the conclusion of a "Carecraft" settlement in another case against the applicant under the CDDA (see paragraph 17 above). The proceedings were, therefore, in progress for approximately five and a half years. It is note-worthy that in the above-mentioned E.D.C. case, the Commission expressed the opinion that proceedings under section 6 of the CDDA lasting four years and five months were too long to be compatible with Article 6 § 1.

28. Some of the delay in the present case is attributable to the applicant's conduct of the proceedings. He cannot be criticised for refusing to consent to the Secretary of State's request to file his evidence late and for making the strike-out application, but it must be acknowledged that the need to dispose of these preliminary applications inevitably contributed to the overall length. In addition, the applicant delayed some five months before appealing to the Court of Appeal against the High Court's rulings on the

preliminary application and cross-application, and was two months late in filing his evidence in response to that of the Secretary of State.

29. Nonetheless, the State must be held responsible for the greater part of the delay. The Court accepts that the Secretary of State's case against the applicant was based on complex evidence. However, as a matter of domestic procedural law, an outline of this evidence should have been served with the summons on 1 July 1992 (see paragraph 21 above). The Secretary of State's failure to comply with this time-limit was described by the Court of Appeal as "far from satisfactory". In the event, the evidence was served some five months later, on 14 December 1992, but the Secretary of State's application for leave to serve the evidence out of time, together with the applicant's cross-application to have the proceedings struck out, were not decided at first instance until 27 January 1994. The applicant appealed against the Registrar's order, but this appeal was not finally determined by the Court of Appeal until 24 May 1996 (almost four years after commencement). For four months (March-June 1994) the civil proceedings were adjourned whilst a criminal trial against some of the co-defendants - but not the applicant - took place. A further five months elapsed after the criminal proceedings had come to an end while the Secretary of State decided whether or not it was in the public interest to continue the disqualification proceedings against the applicant.

30. In all the circumstances, the Court does not consider that the proceedings against the applicant were pursued with the diligence required by Article 6 § 1. There has accordingly been a violation of that provision, in that the applicant's "civil rights and obligations" were not determined within "a reasonable time".

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. Pecuniary damage

32. The applicant claimed that he should not have had to pay the costs of proceedings which violated his rights under Article 6 § 1. He asked to be reimbursed the GBP 94,000 which he had paid towards the Secretary of State's costs (see paragraph 17 above), together with his own domestic costs totalling GBP 185,344.23, inclusive of value added tax ("VAT").

33. The Government submitted that, as part of the “Carecraft” settlement (see paragraph 17 above) the applicant had voluntarily agreed to pay his own and the Secretary of State's costs.

34. The Court recalls the well established principle underlying the provision of just satisfaction for a breach of Article 6, that the applicant should as far as possible be put in the position he would have enjoyed had the proceedings complied with the Convention's requirements. The Court will award monetary compensation under Article 41 only where it is satisfied that the loss or damage complained of was actually caused by the violation it has found, since the State cannot be required to pay damages in respect of losses for which it is not responsible (see *Kingsley v. the United Kingdom (No. 2)* [GC], no. 35605/97, § 40, ECHR 2002- ...).

35. The applicant's complaints about the fairness of the proceedings and of the Secretary of State's decisions to bring the proceedings in the first place and to continue with them despite the applicant's offers of undertakings were declared inadmissible on 26 September 2000. The only issue under the Convention in respect of which the Court has found a violation is the length of the Blackspur proceedings. The Court accepts the Government's argument that the applicant voluntarily agreed to pay the costs in issue as part of the “Carecraft” settlement. Moreover, it cannot be said that this pecuniary loss was attributable to the unreasonable length of the proceedings. The Court therefore rejects the applicant's claim under this head.

B. Non-pecuniary damage

36. In addition, the applicant claimed compensation for the stress and distress caused by having the disqualification proceedings hanging over him for such a long time.

37. The Government contended that the applicant was not entitled to any compensation under this head, because he had not shown that he had suffered any stress or distress as a result of the violation.

38. The Court observes that some forms of non-pecuniary damage, including emotional distress, by their very nature cannot always be the object of concrete proof (see the *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment of 28 May 1985, Series A no. 94, § 96). This does not prevent the Court from making an award if it considers that it is reasonable to assume that an applicant has suffered injury requiring financial compensation (*ibid.*). In the present case, it is reasonable to assume that the applicant suffered distress, anxiety and frustration exacerbated by the unreasonable length of the proceedings. The Court awards 4,500 euros under this head.

C. Costs and expenses

39. Finally, the applicant claimed the costs and expenses of the Strasbourg proceedings, totalling GBP 58,719.83, inclusive of VAT.

40. The Government submitted that this claim was grossly excessive, given that only a small part of the application had been declared admissible. They questioned, moreover, why it had been necessary to employ an “ECHR expert”, in addition to counsel and solicitors, and pay him GBP 20,000.

41. The Court notes that the majority of the applicant's complaints were declared inadmissible as manifestly ill-founded, whereas Article 41 permits the award of just satisfaction only “[i]f the Court finds that there has been a violation of the Convention or the protocols thereto ...”. In connection with the part of the claim for costs relating to the finding of violation, it must be satisfied that the sums claimed were actually and necessarily incurred and reasonable as to quantum.

In the light of the foregoing and given that the Court has only upheld the complaint concerning the length of the Blackspur proceedings, it awards GBP 10,000 in respect of costs and expenses, together with any value added tax that may be payable.

C. Default interest

42. As regards the sum awarded in euros, the Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points. For the sum awarded in pounds sterling, the statutory rate of interest applicable in the United Kingdom at the date of adoption of the present judgment applies, namely 7.5% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* unanimously
 - (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:
 - (i) EUR 4,500 (four thousand, five hundred euros) in respect of non-pecuniary damage;

- (ii) GBP 10,000 (ten thousand pounds sterling) in respect of costs and expenses, together with any value added tax that may be payable;
 - (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable in respect of the sum awarded in euros from the expiry of the above-mentioned three months until settlement;
 - (c) that simple interest at an annual rate of 7.5% shall be payable in respect of the sum awarded in pounds sterling from the expiry of the above-mentioned three months until settlement.
3. *Dismisses* unanimously 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