



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

FOURTH SECTION

**CASE OF SOMJEE v. THE UNITED KINGDOM**

*(Application no. 42116/98)*

JUDGMENT

STRASBOURG

15 October 2002

**FINAL**

*15/01/2003*

*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 Somjee 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. PAVLOVSCHI, *judges*,

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

Having deliberated in private on 24 September 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 42116/98) 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, Ms Shehnaz Somjee ("the applicant"), on 21 December 1997.

2. The applicant was represented by Mr E. Abrahamson, a lawyer practising in Liverpool. The United Kingdom Government ("the Government") were represented by their Agent, Mr J. Grainger, Foreign and Commonwealth Office.

3. The applicant alleged, in particular, that three sets of civil proceedings commenced by her were not determined 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 (Rule 52 § 1 of the Rules of Court), which declared part of the application inadmissible on 7 March 2000. On 29 May 2001 the Third Section declared the applicant's complaint about the length of the proceedings admissible and decided to dispense with a hearing (Rule 59 § 2 *in fine*). On 2 October 2001 the Court again considered whether there should be an oral hearing and again decided to dispense with one. Instead, the applicant and the Government each filed written observations on the merits (Rule 59 § 1).

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. Background to the case

7. The applicant is a British national, born in Karachi, Pakistan, in 1953 and living in Melling, Merseyside.

8. The applicant qualified as a surgeon in Pakistan in 1978 and came to the United Kingdom in 1980. In 1986 she was appointed to the post of Ear, Nose and Throat Registrar at Walton Hospital in Merseyside.

9. In July 1988, the Mersey Regional Health Authority (“the Health Authority”) held reviews of the nine non-rotational registrars, including the applicant. The applicant alleged that she was treated less favourably than others, on racial grounds, in relation to the review and in relation to other aspects of her training and employment.

#### B. The first claim

10. On 25 October 1988, the applicant, supported by the Commission for Racial Equality, commenced proceedings in the Liverpool Employment Tribunal (“the Tribunal”) against the Health Authority and others alleging discrimination contrary to the Race Relations Act 1976 (“the first claim”).

11. The respondents’ defence (“Notice of Appearance”) was filed on 30 November 1988, fourteen days after the expiry of the relevant time-limit.

12. The case was originally to be listed for hearing in January 1989, but the applicant declined the proposed dates because she would be busy with examinations. The hearing on the merits took place between 21-23 February 1989 but could not be concluded within the period foreseen by the parties, so was adjourned to 10-13 April 1989.

13. The Tribunal’s decision, dismissing the applicant’s claim, was given on 9 May 1989, and received by the applicant on 15 May 1989.

14. On 4 May 1989, prior to the delivery of the Tribunal’s decision, the applicant had submitted an “Application for Perjury”, alleging that two of the respondents’ witnesses had given false evidence. She was informed by a letter dated 11 May 1989 that her allegations had not prevented the Tribunal

from issuing its decision, and that the Tribunal had no jurisdiction to take action over perjury, which was a criminal offence. The applicant responded on 21 May 1989 that she wished her “Application for Perjury” to be treated as an application for review, and she submitted a full application on 28 May 1989. The Tribunal may exercise its powers of review on limited grounds, such as emergence of new evidence, a decision made in the absence of a party or “the interests of justice”.

15. The Tribunal heard the application for review on 16 August 1989. In its decision of 31 August 1989 the Tribunal granted leave for a review on two grounds: whether two of the respondents’ witnesses had given false evidence as to the qualifications necessary for appointment as Senior Registrar, and whether an assessment form about the applicant had been fabricated. A further three-day hearing took place between 1-3 November 1989, and in a decision dated 16 November 1989, sent to the parties on 20 November 1989, the Tribunal rejected the applicant’s allegations and upheld the original decision.

16. In addition, on 17 June 1989, the applicant appealed against the Tribunal’s decision of 9 May 1989 to the Employment Appeal Tribunal (“EAT”). On 4 October 1989 she wrote to the EAT asking for the appeal to be postponed until the Tribunal had considered her application for review. Following the Tribunal’s decision of 16 November 1989 on the review application, the applicant wrote to the EAT on 24 December 1989 asking it to proceed with the original appeal and also indicating that she wished to appeal against the review decision.

17. Her appeals against the original decision and against the review decision were considered together. On 19 February 1990 the EAT wrote to the applicant telling her that an *ex parte* preliminary hearing, to decide whether the appeal had any prospect of success, would take place. According to the Government, this hearing was originally scheduled for 22 January 1991, but was postponed at the last minute because the applicant’s counsel would not be available until March. The hearing was relisted for 17 July 1991. Prior to this hearing, the applicant wrote several times to the EAT protesting about the delay. In a letter dated 9 May 1991 the EAT explained that the delay was “caused by the limited number of Judges available to sit at the [EAT, which] restricts the amount of Court sittings we can provide”.

18. At the hearing on 17 July 1991 the EAT decided to allow the appeals to proceed to a full hearing and gave a number of directions; for example, the applicant was granted leave to amend her Notice of Appeal and it was ordered that a bundle of exhibits for the hearing be agreed and paginated. It appears from a letter written by the applicant’s solicitors to the Tribunal on 4 October 1991 that, at the hearing on 17 July 1991, the EAT Chairman also commented that the applicant’s second claim in the Tribunal – which had been adjourned pending the outcome of the appeal in the first claim (see

paragraphs 35 and 37-38 below) – should not be held back any longer, but should be listed for hearing as soon as possible. It further appears, from correspondence between the applicants’ two sets of solicitors, that the President indicated that the appeal in the first claim should not proceed to full hearing until the second and third claims had been dealt with in the Tribunal, so that if there were any appeals in respect of the second and third claims, these could be consolidated and heard together with the appeal in the first claim.

19. On 9 October 1991 the respondents’ solicitors wrote to the EAT complaining that the applicant had not yet submitted her amended Notice of Appeal. The EAT made enquiries of the applicant’s solicitors, who replied that there were matters outstanding before the Tribunal – principally, the second and third claims (see below) – which, in accordance with the Chairman’s comments (see paragraph 18 above), required to be resolved before the appeals could proceed to a hearing. On 17 October 1991, therefore, the EAT wrote to the respondents’ solicitors directing that further proceedings on the appeals would be stayed pending the determination of the other claims in the Tribunal.

20. On 1 February 1995 the applicant filed an amended Notice of Appeal with the EAT. The respondent filed an Answer on 31 March 1995. On 19 May 1995 the EAT held a directions hearing, at which it ordered that, in view of the delay of nearly four years since the last directions hearing on 17 July 1991, the stay should be lifted, and that the appeals in the first claim should proceed to a hearing on 6 November 1995, which was the first date that was convenient for the EAT and the parties and their lawyers.

21. The EAT heard the appeals in the first claim on 6 and 7 November 1995, but decided to wait until it had heard the anticipated appeal in the second claim before giving judgment, because this approach would enable it “to have as complete a picture as possible of the plethora of complaints brought by Miss Somjee in the ... Tribunal ... against the Health Authority”. The appeal in the second claim was heard on 6-7 June 1996 (see paragraph 50 below).

22. The judgment in the appeals in the first, second and third claims was subsequently handed down on 25 October 1996, but was not sent to the parties until 18 November 1996. The EAT dismissed the appeals in the first claim, finding that the case had largely turned on questions of credibility of witnesses and that there was nothing legally wrong in the Tribunal holding that the respondents’ witnesses were more credible than the applicant.

23. On 28 November 1996 the respondents applied to the EAT for costs in respect of the appeals in the first and second claims. On 18 April 1997 the EAT refused to order costs against the applicant in respect of the first claim. It can order costs only where a party has been guilty of unnecessary, improper, vexatious or other unreasonable conduct (Employment Appeal Tribunal Rules 1996, rule 34).

24. On 25 November 1996 the applicant applied to the Court of Appeal for leave to appeal against the decisions of the EAT. On 7 July 1997, the Court of Appeal held a hearing at which it considered the applicant's appeals against the EAT's two decisions in the first claim and decision in the second claim (see paragraphs 22 above and 50 below), the costs order made against the applicant by the EAT in the second claim on 18 April 1997 (see paragraph 50 below above) and the EAT's refusal to transfer the third claim away from the Liverpool region (see paragraph 54 below).

The applicant was refused leave to appeal, on the basis that there was no evidence of bias or unfairness in the hearings before the Tribunal, and that the applicant's grounds of appeal merely repeated factual allegations that had been rejected by the Tribunal and EAT. Lord Justice Waite further commented:

“As to the general allegations that she has had a raw deal, I find those to be without any foundation at all. Miss Somjee cannot say that her initial complaint was brushed aside. On the contrary, she had a hearing before the first ... Tribunal with representation on the part of the Commission for Racial Equality and on appeal to the [EAT] with representation by leading counsel. Her endeavours since the first complaint have been prompted by a refusal to accept failure. She, if I may presume to advise her, should not lose sight of the fact that although race discrimination is a serious evil which the law is rightly astute to prevent, the opportunity to complain of discrimination puts a powerful weapon in the hands of the complainant. Charges of race discrimination are extremely hurtful and are not always easy to resist, at all events, without time, trouble and expense. Those who abuse the right of complaint by over-persistent or unscrupulous use of it must expect to suffer the consequence of having such misuse penalised by adverse costs orders. Such an order was made in this case by the [EAT]. It was, in my view, amply justified.”

No appeal lies to the House of Lords from a refusal of leave to appeal by the Court of Appeal.

### **C. The second and fourth claims**

25. Meanwhile, in March 1989 the Health Authority informed the applicant that her contract of employment would not be renewed. In April 1989 the applicant qualified as a Fellow of the Royal College of Surgeons. On 1 June 1989, the applicant's contract of employment expired and she was dismissed.

26. On 2 August 1989 the applicant commenced further proceedings in the Tribunal (“the second claim”), in which she made allegations of victimisation against two health authorities and five other respondents, primarily that she had been dismissed because she had brought the first claim, complaining of race discrimination.

27. On 16 August 1989 the Tribunal held a hearing at which the Mersey Regional Health Authority agreed to accept liability for the acts of the individual respondents if it was found that they had discriminated against or

victimised the applicant. In its decision sent to the parties on 22 August 1989, the Tribunal therefore dismissed the claims against all the respondents except the Mersey Regional Health Authority and the South Sefton Health Authority. The two health authorities (“the respondent”) filed a Notice of Appearance (defence) on 22 August 1989.

28. On 23 August 1989 the Tribunal decided that the second claim should be stayed pending its decision on the applicant’s application for it to review its decision on the first claim (see paragraphs 14-15 above). No further action was taken in respect of the second claim, therefore, until after the Tribunal’s review decision of 16 November 1989.

29. Thereafter, by a notice dated 8 January 1990, the Tribunal sought to list the second claim for hearing. The dates initially suggested, 5-9 March 1990, were rejected by the respondent on the grounds that its counsel was not available, that the time allocated was too short, and that a pre-hearing assessment (directions hearing) would in any case be necessary to clarify the issues in the case.

30. A preliminary hearing took place on 16 March 1990, when the Tribunal rejected an application by the respondent to make a costs warning. The respondent also applied for a further preliminary hearing to determine whether the applicant’s allegations had been made within the time limit laid down in section 68 of the Race Relations Act 1976, but the Tribunal refused the respondent’s request.

31. On 28 March 1990 the Tribunal contacted the parties with proposed dates for the full merits hearing, between 30 April and 4 May 1990. Once again, the respondent rejected these dates because of the unavailability of counsel, but the Tribunal refused to delay the proceedings and listed the hearing regardless.

32. The hearing was nonetheless delayed because on 11 April 1990 the applicant issued a further set of proceedings (“the fourth claim”) alleging victimisation by an employee of the respondent, who had declined to continue acting as referee for her. A preliminary hearing on the fourth claim was held on 19 June 1990, when the claim was dismissed as having been brought outside the statutory time-limit.

33. Following the dismissal of the fourth claim, the next available dates for the hearing of the second claim were between 24 September and 5 October 1990. However, on 31 July 1990 the respondent had written to the applicant’s solicitors asking for various particulars, in an attempt to narrow the issues in the claim and limit the number of witnesses that would have to be called. The following day the respondent’s solicitors sent a copy of this letter to the Tribunal asking it not to list the case for hearing until the applicant had replied.

34. The applicant’s solicitors responded with the particulars on 21 August 1990, and on 22 August the Tribunal offered further hearing dates, to commence on 29 October 1990. On 6 December 1990 the

applicant's solicitors wrote to the Tribunal to refuse that listing, because the applicant's counsel would not be available, although he would be free in the following weeks – commencing 5 and 12 November. These dates were not convenient for the Tribunal. The respondent's witnesses were not available for hearing dates proposed in January 1991, and the applicant's counsel was again unavailable in February and March 1991.

35. On 7 December 1990 the Tribunal proposed that the hearing take place between 8-19 April 1991. However, on this occasion the respondent replied by requesting that the hearing of the second claim be deferred until the appeal to the EAT on the first claim, concerning the credibility of the respondent's witnesses, had been determined (see paragraph 16 above).

36. The respondent also requested that the second and third claims be consolidated. The Tribunal refused to grant this request unless the applicant's two sets of solicitors (one each for the second and third claims) agreed. Lengthy correspondence ensued, culminating in a letter from the Tribunal dated 30 May 1991 stating that the second and third claims would not be consolidated.

37. The Tribunal granted the stay on 13 December 1990. On 1 May 1991 it wrote to the applicant's solicitors indicating that, notwithstanding the ongoing delays in relation to the appeals on the first claim, the decision to stay the hearing of the second claim pending those appeals remained in place. The EAT wrote to the respondents' solicitors on 9 May 1991 acknowledging the considerable delay in the hearing of appeals before it generally at that time, and explained this as being caused by the limited number of available judges.

38. On 22 May 1991, the solicitors acting for the applicant in the second claim complained to the Tribunal about the delay in listing the hearing and asked the Tribunal to hear that claim without waiting for the appeals in respect of the first claim to be heard. The Tribunal refused this request, but on 4 October 1991 the applicant's solicitors again wrote to the Tribunal asking that the case now be listed for hearing, pursuant to the comments of the EAT at the preliminary hearing of the appeal in the first, to the effect that the second claim should proceed to hearing without waiting for the determination of the appeal in the first claim (see paragraph 18 above). The Tribunal then offered dates for hearing between 2 and 31 January 1992, but the respondent pointed out that the claim was still not ready to proceed to a full merits hearing because the applicant had not yet properly defined her claim (see paragraph 33 above).

39. An interlocutory hearing was held on 17 January 1992, at which the applicant's solicitors undertook to produce, within one month, a schedule of specific complaints in order to save time at the hearing. The Tribunal was also told that the applicant's counsel would not be available until April 1992. Accordingly it offered a hearing listing between 11 and 22 May 1992.

40. The applicant's solicitors failed to produce a schedule of complaints. The respondent first informed the Tribunal of this failure in May 1992 and requested the Tribunal to consider making an order requiring the schedule's production. On 19 May 1992 the applicant's solicitors informed the Tribunal that they were awaiting instructions from the applicant and, on 29 October 1992, that they were no longer acting for her. Nine further letters of complaint were sent by the respondent to the Tribunal between July 1992 and January 1993.

41. On 24 February 1993 the Tribunal held a preliminary hearing on the issue of delay. The applicant, now acting in person, had still not provided the schedule. Both sides applied to strike-out the other's case on grounds of want of prosecution.

42. On 8 June 1993, the Tribunal gave its decision, refusing to strike out the second and third claims, ordering the respondent to file an amended Notice of Appearance within 42 days and indicating that the substantive hearing in the second claim should proceed as quickly as possible. Because the applicant was now acting in person, the Tribunal decided that it would not be reasonable to expect her to produce the promised schedule.

In relation to the delays in the proceedings generally, and in support of its decision to refuse both strike-out applications, the Tribunal commented:

"...Although the hearing was quite lengthy, and a good deal of detail was discussed ... this decision is intentionally presented in a somewhat attenuated form. Among other considerations it is now felt necessary to adopt that course of action simply to get the decision promulgated without further delay. The Chairman is all too conscious of the time which has already elapsed since the date of the hearing, but the general pressure of incoming work upon the Tribunals continue quite relentlessly, and his absence through illness, earlier in the year, although not protracted, was sufficient in itself to create some further accumulation of matters, many of them weighty and not capable of easy disposal. ...

Unfortunately, the very real expectations aroused by the meeting on 17 January 1992 failed to be fulfilled. We need not, we feel, dwell on the reasons for that, but it is indeed most unfortunate that progress was not, in fact, then made because, due to extraneous factors, principally concerned with the unprecedented case load of the Tribunals at the present time, which has already been referred to, it has now become even more difficult to make any headway with a matter as intractable as this undoubtedly has been. ...

In reaching [the decision to refuse both strike-out applications] the Tribunal has been most conscious of the considerable delays which have already occurred but also that that cannot solely be attributed to one or other of the parties. Moreover, the Tribunal itself, even allowing for the extremely difficult general pressures, most [sic] acknowledge a share of responsibility. No-one, unfortunately, emerges without blemish."

43. The respondent failed to comply with the 42-day deadline for the filing of the amended Notice of Appearance, and did not provide the document until 27 August 1993. On 15 August 1993 the applicant applied

for the respondent's defence to be struck out for failure to comply with the deadline and asked for a hearing on this application after 30 September 1993. The hearing took place on 2 December 1993, on which date the applicant's application was refused.

44. The applicant appealed against this decision to the EAT. The appeal was heard and rejected on 22 September 1994, because the EAT agreed with the Tribunal that the applicant had not been caused any substantial prejudice by the additional delay. The EAT directed that a date be fixed for a hearing, "even if that means standing out some case which has not got this lamentable history of delay".

45. On 18 December 1994 the applicant wrote to the EAT to draw attention to three cases mentioned in her grounds of appeal which the EAT had not referred to in its decision, and stating "I do not know if [the judge] may wish to review his decision in the light of the above omissions ...". This letter was treated by the EAT as a request for a review of its decision of 22 September 1994. On 19 May 1995 the EAT held a hearing of the review application, and in a decision promulgated on 14 June 1995 it refused to grant the review, pointing out that its powers of review were limited and could not be used to enable a case to be re-heard or re-argued. The EAT held that it had reached the correct decision on 22 September 1994 and that the cases cited by the applicant did not affect that decision.

46. Following the dismissal of her appeal by the EAT (see paragraph 44 above), but before the applicant's application for review of that decision (see paragraph 45 above), the Tribunal had listed the second claim for hearing on the merits over ten days from 6 February 1994. On 15 January 1995 the applicant wrote to the Tribunal stating that she was not ready for a full merits hearing in the second claim, because (1) her review application was still pending before the EAT, and she might appeal any decision reached by the EAT; (2) she was applying for a transfer of the second and third claims away from Liverpool; and (3) her father, for whom she was the sole carer, was seriously ill. The Tribunal agreed to a short adjournment. The next dates proposed by it had to be vacated at the instigation of the respondent, one of whose key witnesses was not available.

47. The hearing on the merits in the second claim finally commenced on 5 June 1995. The applicant made it clear that she was participating under protest, because her application for a change of venue had been refused and she was seeking to appeal that refusal. She was not represented and cross-examined the respondent's witnesses herself. The hearing of the second claim involved evidence from the applicant and from seven witnesses for the respondent, and the consideration of over 1,000 documents. The hearing lasted for 17 days in total. It was not possible to complete it within the time-scale originally contemplated, and it had to be relisted for two further weeks, one in August and one in September 1995.

48. The Tribunal's decision was promulgated on 2 November 1995. It dismissed the applicant's claim in its entirety, concluding:

"This is a very sad case indeed. Miss Somjee is clearly both an intelligent woman and in many ways an excellent and dedicated doctor whose career appears, as she claims herself, to have been severely damaged. The sympathy we would otherwise have felt for her, however, has been largely destroyed by the way she conducted herself before us. By this we do not mean particularly her attitude towards the Tribunal but rather to her former colleagues. The serious allegations she levelled at them were ... scandalous and wholly without foundation."

49. On 14 December 1995 the applicant appealed to the EAT, accusing the Tribunal of bias and racism. On 20 February 1996 the applicant filed an affidavit relating to the Tribunal's alleged misconduct. The Chairman of the Tribunal provided his comments on the applicant's allegations in a letter dated 3 April 1996.

50. The appeal was heard on 6-7 June 1996 and the EAT handed down its judgment, dismissing the appeals in the first, second and third claims, on 25 October 1996 (see paragraphs 22 above and 54 below). On 18 April 1997 the EAT ordered the applicant to make a contribution of GBP 2,500 towards the respondent's costs of the appeal in the second claim, because, in the EAT's view:

"she has, in respect of those appeals, acted unreasonably. She has brought cases which have not only been unsuccessful, she has made allegations in them which were not substantiated by evidence. The appeals stood no real prospect of succeeding."

51. The EAT refused leave to appeal to the Court of Appeal against its decisions to dismiss her appeal and to order costs. The applicant then applied to the Court of Appeal which, on 7 July 1997, refused leave to appeal (see paragraph 24 above).

#### **D. The third claim**

52. On 23 August 1989 the applicant had lodged another claim ("the third claim") in which she alleged against the Health Authority that she had been unfairly dismissed on 1 June 1989 (see paragraph 25 above). Although the second and third claims were closely linked, the applicant employed different solicitors in respect of each and the Tribunal refused to consolidate the cases unless both solicitors consented (see paragraph 36 above). The claims therefore proceeded in parallel.

53. At the hearing on 24 February 1993 (see paragraph 41 above), the Tribunal considered an application by the respondent to strike-out both the second and third claims. The respondent complained that the applicant's solicitors had failed to provide further and better particulars of her claim, as they had been requested to do at the previous hearing on 17 January 1992. The applicant claimed that her solicitors had sent this information by a letter dated 13 February 1992. The strike-out request was rejected by the

Tribunal, but the Tribunal ordered that only the second claim proceed to hearing and that the third claim be held in abeyance meanwhile.

54. In January 1996, the applicant applied (for the fourth time) for the third claim to be transferred from the Liverpool Tribunal. The application was refused by the Tribunal on 22 January 1996, and the applicant appealed against this decision to the EAT, by notice of appeal dated 1 March 1996. This appeal was heard by the EAT together with the substantive appeal in the second claim, on 6-7 June 1996 (see paragraphs 22 and 50 above), and dismissed in a decision dated 25 October 1996. Costs were again awarded against the applicant as a result of her unreasonable conduct in pursuing this appeal in the third claim, and the EAT refused leave to appeal to the Court of Appeal.

55. In its decision of 7 July 1997 (see paragraph 24 above), the Court of Appeal refused leave to appeal the EAT's transfer decision and costs order on the third claim.

56. In July 1997, the applicant asked the Tribunal to adjourn the third claim to await the outcome of the present application to the European Commission of Human Rights and of an application which she indicated that she was making to the European Court of Justice. The Tribunal refused the applicant's request for an adjournment, and listed the hearing of the third claim for 1 May 1998.

57. On 1 May 1998, the Tribunal dismissed the third claim at a hearing at which the applicant declined to appear. She has not attempted to appeal against that decision.

## THE LAW

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

58. The applicant complains that the domestic proceedings were not concluded within a reasonable time. Article 6 § 1 of the Convention provides, so far as material:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

## A. The submissions of the parties

### 1. *The Government*

59. The Government submitted that, in the light of the complexity of the proceedings and the conduct of the applicant and of third parties for whom the Government were not responsible, the time taken to determine the applicant's various claims was not unreasonable.

60. In respect of the first claim, the Government pointed out that the Tribunal conducted three hearings between October 1988 and November 1989, including a full merits hearing lasting five days and a review hearing lasting three days.

In the EAT, the postponement of the preliminary appeal hearing in January 1991 until July 1991 was for the applicant's convenience and from October 1991 until June 1995 the appeals were stayed at the request of the applicant pending hearings in the Tribunal on the second and third claims. Neither party made any application to lift the stay, the claim was dealt with expeditiously once the stay had been lifted, and the decision to reserve judgment pending a hearing of the applicant's anticipated appeal in the second claim was reasonable in that it allowed the EAT to have a complete picture of the applicant's complaints before delivering judgment.

61. In respect of the second claim, the Government pointed out that it was factually complex, which gave rise to difficulties in listing, as a substantial period of free time had to be found in the Tribunal's calendar. A number of attempts to list the hearing were frustrated by non-availability of counsel or witnesses. The claim was also procedurally complex, requiring numerous preliminary hearings, and was further complicated by its inter-relationship with the applicant's other claims; for example, the second claim was suspended pending the hearing of the review, and subsequent appeal, in the first claim. The Government submitted that the applicant's conduct was the primary reason for the delays in determination of the second claim, including, *inter alia*, the introduction of the time-barred fourth claim, the applicant's failure to co-operate fully with the Tribunal's listing efforts or to clarify the issues, her prolonged and vexatious attempts to strike out the respondent's defence and her attempts to transfer the claim to another regional tribunal.

62. In relation to the third claim, the Government again submitted that the applicant was primarily responsible for the delay and thus had waived her right under Article 6 § 1 to complain about the length of the proceedings. She resisted attempts at consolidation with the second claim and made protracted attempts to transfer the proceedings to a different regional tribunal. Once the appeals had been determined in the first and

second claims, the applicant continued to resist any hearing of the third claim and did not attend the hearing in May 1998.

## *2. The applicant*

63. The applicant contended that the vast majority of the delay suffered by her in connection with the first, second and third claims was caused by the Tribunal's decision to stay the second and third claims pending the outcome of the first claim, and then the EAT's direct reversal of this approach so as to stay the appeal in the first claim pending determination of the second and third claims. The situation was made worse by the subsequent delay in getting the second and third claims listed.

64. In relation to the first claim, the applicant submitted that the delay in the preliminary hearing on the appeals, particularly the six month period following cancellation of the January 1991 hearing, was manifestly unreasonable. She denied the Government's assertion that she requested that the appeals be stayed pending determination of the second and third claims, and further disputed the Government's assertion that the decision to reserve judgment in the appeals pending her anticipated appeals in the second claim was reasonable, particularly bearing in mind the fact that six years had already elapsed since the appeal was lodged.

65. In relation to the second claim, the applicant highlighted the role played in the listing delays by non-availability of the respondent's counsel and witnesses and contended that, since the respondent parties were public authorities, the Government must take responsibility for the delays which they caused. She stated that she continually resisted any stay pending the review of, and subsequent appeal in, the first claim and that she was initially unaware of her solicitors' failure to produce a schedule of specific complaints following the preliminary hearing in January 1992. Once she became so aware, she ceased to instruct the solicitors in question and was only prevented from providing the schedule herself thereafter because, she claimed, the Tribunal refused to communicate with her directly. She contended that her attempts to strike out the respondent's defence were reasonable in the light of their failure to comply with the Tribunal's directions and that she was entitled to pursue the appeals available to her.

66. In relation to the third claim, the applicant argued that non-consolidation was irrelevant to the question of delay, and pointed out that it was the Tribunal which refused to consolidate and the respondent who continually tried to overturn that decision. She was entitled to seek to transfer the case to a different regional tribunal as she felt she was prejudiced by the Tribunal's knowledge of her other cases.

## **B. The Court's assessment**

67. The reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the individual case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the parties' conduct and that of the competent authorities, and the importance of what was at stake for the applicant in the litigation (see, among many other authorities, the *Gast and Popp v. Germany* judgment of 25 February 2000, *Reports of Judgments and Decisions* 2000-II, § 70).

68. The Court observes at the outset that the first claim commenced on 25 October 1988, the second claim commenced on 2 August 1989 and the third claim commenced on 23 August 1989. The first and second claim did not end until the judgment of the Court of Appeal on 7 July 1997, and the third claim appears to have come to an end on 1 May 1998. Thus, the first claim lasted over eight years and nine months for three instances; the second claim lasted over seven years and eleven months, also for three instances, and the third claim lasted over eight years and eight months, for just one instance. The proceedings in question related to the applicant's employment as a surgeon and included allegations of racial harassment. The fact that the applicant's allegations were eventually held to be unfounded does not alter the fact that the matters at stake were important to her.

69. It is clear that certain aspects of the proceedings were factually and procedurally complex. The hearing of the second claim lasted 17 days and involved eight witnesses (including the applicant herself) and over 1,000 documents. The four sets of proceedings were clearly inter-related, which added to procedural complexity, whilst the second claim in particular involved a number of preliminary issue hearings, and appeals against the decisions reached at those hearings, before the first full merits hearing could even take place.

70. Moreover, the applicant was undoubtedly to blame for some of the delays in the proceedings. For example, a number of hearings were postponed because she or her counsel were unavailable (see paragraphs 12, 17, 34, 39 and 46 above), documentation required from her or her representatives was not lodged as directed (see paragraphs 18-20 and 38-41) and she persistently sought to transfer the third claim from the Liverpool Tribunal and thereafter to defer a hearing in the claim (see paragraphs 54 and 56 above). Furthermore, it appears that some of the appeals sought by the applicant were unreasonable and without merit, as is evidenced by the comments of the EAT and Court of Appeal and the costs orders made against her (see paragraphs 24 and 50 above).

These factors reduce the period of time for which the respondent State can be held accountable under Article 6 § 1.

71. The conduct of the respondent health authorities gave rise to some additional delay (see paragraphs 11, 29, 31, 34, 43 and 46 above). The applicant has argued that, as the respondent in each of the claims was a public health authority, the Government should take responsibility for delays caused by them. The Court, however does not consider that the respondents' conduct, viewed as a whole, caused delays sufficient to give rise to any separate violation of Article 6 § 1. It is therefore unnecessary to consider whether the Government could be held responsible under that Article for unreasonable delays caused by the health authorities in the course of fighting the proceedings.

72. In contrast, delays caused by the conduct of the judicial authorities are, of course, clearly the responsibility of the Government under the Convention, and the Court is of the view that the Tribunal and the EAT contributed directly to the length of the proceedings, particularly in respect of their conduct of the first and second claims. The following instances are particularly note-worthy:

(i) the Tribunal's decision on 13 December 1990 to stay the second claim pending a decision by the EAT on the applicant's appeals in the first claim. This adjournment was maintained notwithstanding significant delays encountered in the conduct of the appeals, as acknowledged by the EAT in its letter of 9 May 1991, and was lifted only when, on 17 July 1991, the Chairman of the EAT requested that the second claim should proceed in the Tribunal without waiting for the conclusion of the appeals in the first (see paragraphs 18 and 37-38 above);

(ii) the failure by the Tribunal to set a date for a full hearing of the second claim between November 1989 and December 1990 (see paragraphs 29-34 above). The Court notes that this was due to various factors, including the need for a pre-hearing assessment, non-availability of counsel and witnesses on a number of dates offered, and the lodging of the fourth claim (which raised connected issues), but nonetheless considers that the failure to list the claim for a full hearing within sixteen months of its being lodged must give rise to some responsibility on the part of the Tribunal (see the *Scopelliti v. Italy* judgment of 23 November 1993, Series A no. 278, § 25);

(iii) the delay by the EAT in progressing the applicant's appeal in the first claim. The appeal was lodged on 17 June 1989, postponed until after the Tribunal's determination on 16 November 1989 of the application for review, and then listed for a preliminary hearing on 22 January 1991 to determine whether it had any reasonable prospects of success. The applicant's counsel was not available until March 1991, and the preliminary hearing was thus postponed until 17 July 1991, as a result of

the applicant's failure to accept the first proposed date but also because of "the limited number of Judges available to sit at the [EAT]" (see paragraph 17 above). The Court recalls that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet its requirements (see, among many other authorities, the *Tusa v. Italy* judgment of 27 February 1992, Series A no. 231-D, § 17). The five-month delay by the EAT in holding the preliminary hearing was particularly regrettable given that the hearing of the second claim by the Tribunal had been adjourned pending resolution of this appeal;

(iv) the decision taken by the EAT on 17 October 1991 to postpone the full hearing of the appeal until after the Tribunal had heard the second and third claims (see paragraph 19 above). As a result of this decision and the long delays in the Tribunal between October 1991 and November 1995 (see subparagraph (v) below), the appeals in the first claim were not heard until 6-7 November 1995, over four years since the July 1991 preliminary hearing. This long delay was compounded by the EAT's decision to defer judgment until after it had considered the anticipated appeal in the second claim, which was not heard until 6-7 June 1996, and the subsequent interval of over five months before the judgment was sent to the parties (see paragraphs 21-22 below);

(v) the delay encountered in listing the full hearing in the second claim following the applicant's letter of October 1991 asking that the stay be lifted (see paragraph 38 above). Although a pre-hearing discussion was held by the Tribunal in January 1992, at which the applicant's solicitors undertook to produce a "schedule of complaints" within a month, no further progress was made until a further preliminary hearing had to be held in February 1993 in order to address the ongoing delay caused by the failure to produce the schedule and to hear strike-out applications from both parties (see paragraphs 39-41 above). The respondent first informed the Tribunal of this failure in May 1992 and requested the Tribunal to consider making an order requiring its production. No less than nine further letters were sent by the respondent to the Tribunal between July 1992 and January 1993 before the preliminary hearing was arranged (see paragraphs 40-41 above). Although the catalyst for the delay was the omission on the part of the applicant and her solicitor to produce the schedule as promised, the failure by the Tribunal to react promptly to prevent further delay was regrettable, as the Tribunal itself acknowledged in its judgment of 8 June 1993 (see paragraph 42 above). Furthermore, the delay was compounded by the fact that the Tribunal's decision following the February 1993 hearing was not delivered until June 1993 (*ibid*). These delays were

particularly unfortunate given that the appeal in the first claim was adjourned throughout this period (see subparagraph (iv) above);

(vi) the delay in processing the applicant's second strike-out application in the second claim, following the respondent's failure to file an amended Notice of Appearance in the required timeframe (see paragraph 43 above). The application was lodged on 15 August 1993, the applicant asked for a hearing to take place after 30 September 1993 and the application was heard and dismissed by the tribunal on 2 December 1993. The applicant appealed against that dismissal, but her appeal was not heard by the EAT until 22 September 1994 (see paragraph 44 above). The applicant wrote to the EAT seeking clarification of its decision, and her letter was treated as a request for a review. The review hearing was not held until 19 May 1995, and the decision on it not given until 14 June 1995 (see paragraph 45 above). Again, the Court notes that these delays were allowed to continue notwithstanding the ongoing adjournment of the appeal in the first claim.

73. In conclusion, therefore, the Court considers that the conduct of the proceedings before the Tribunal and EAT reflected, to use the words of the EAT in its judgment of 22 September 1994, a "lamentable history of delay" (see paragraph 44 above), for which the judicial organs involved must take (and indeed did accept) a significant proportion of the blame.

It follows that there has been a violation of Article 6 § 1 in the present case.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed the legal costs of the domestic proceedings and the expenses she incurred as a litigant in person before the EAT and the Court of Appeal, in total GBP 23,195.21. She also claimed GBP 598,898.70 compensation for damage to her career and loss of income.

76. The Government pointed out that there was no causal connection between the losses claimed and the length of the proceedings: the legal expenses claimed would have been incurred whatever the length of the proceedings, and the alleged failure of the applicant's career was not attributable to delay in the proceedings either.

77. 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 or she 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-IV).

78. The Court agrees with the Government that there is no causal connection between the pecuniary damage alleged by the applicant and the violation found in this case. There is nothing to suggest that her legal costs and expenses were incurred or increased because of the unreasonable delay, or that her career was in any way damaged as a result of the length of the proceedings. In this latter respect, the Court notes that the applicant's complaints about discrimination and the outcome of the domestic proceedings were declared inadmissible on 7 March 2000.

The Court therefore rejects the applicant's claims under this head.

## **B. Non-pecuniary damage**

79. The applicant claimed compensation for non-pecuniary damage in excess of GBP 677,000. She claimed to have suffered injury to her health, social life and career as a result of her dismissal in June 1989 and the resultant insecurity and necessity to take locum work. She also claimed compensation for damage directly caused by the length of the proceedings.

80. The Government again submitted that there was no causal link between the health problems allegedly suffered by the applicant and the length of the proceedings. Nor could the applicant claim that the length of the proceedings had caused her distress or frustration requiring financial compensation, given, *inter alia*, her own substantial contribution to the delay.

81. The Court repeats its above observation that the damage to her career and resulting health and other problems suffered by the applicant are in the main not causally connected to the violation found in the present case. It is, however, reasonable to assume that the applicant suffered some distress, anxiety and frustration exacerbated by the unreasonable length of the proceedings. The Court awards 5,000 euros under this head.

### C. Costs and expenses

82. Finally, the applicant claimed the costs of the Strasbourg proceedings, including GBP 10,627.30 legal fees, GBP 120.15 expenses and GBP 121.74 interest on a loan taken out to pay the legal fees.

83. The Government contended that this claim was excessive, given that the applicant was represented by solicitors and counsel only at a relatively late stage of the proceedings.

84. The Court notes that it can award legal costs only if satisfied that the sums claimed were actually and necessarily incurred and reasonable as to quantum. In the present case, given the limited nature of the issues before the Court, it considers that 2,500 euros constitutes a reasonable award.

### D. Default interest

85. 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 (see the case of *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, 11 July 2002) .

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 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:
    - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into pounds sterling at the rate applicable on the date of settlement;
    - (iii) EUR 2,500 (two thousand, five hundred euros) in respect of costs and expenses, to be converted into pounds sterling at the rate applicable on the date of settlement;
    - (iii) any tax that may be chargeable on the above amounts;
  - (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 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 15 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Matti PELLONPÄÄ  
President