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

FOURTH SECTION

CASE OF JORDAN v. THE UNITED KINGDOM (No. 2)

(Application no. 49771/99)

JUDGMENT

STRASBOURG

10 December 2002

FINAL

10/03/2003

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 Jordan v. the United Kingdom (No. 2),

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 V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 19 November 2002,

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

PROCEDURE

1. The case originated in an application (no. 49771/99) 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 national of the United Kingdom, Mr Stephen Mark Jordan ("the applicant"), on 8 June 1999.

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

3. The applicant alleged that the court-martial proceedings against him were not conducted within a reasonable period of time.

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.

5. By a decision of 25 September 2001 the Court declared the application admissible.

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.

7. The applicant filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The court-martial proceedings

8. The applicant was born in 1971 and lives in Wolverhampton. In March 1995 he was a soldier in the British Army.

9. On 3 March 1995 the Special Investigations Branch of the military police ("SIB") began investigating charges against him in relation to the fraudulent misuse of travel warrants. He was due to be interviewed on 28 March 1995 but went missing from his unit. On 20 April 1995 he was arrested by the civilian police and returned to his unit. His commanding officer dealt with the charge of absence without leave summarily and sentenced him to, *inter alia*, 28 days' imprisonment. The applicant served 23 days.

10. On 27 May 1995 the applicant was due for release, but his detention was continued because of the SIB investigation. On 1 and 2 June 1995 he was interviewed by the SIB. On 15 June 1995 he instructed his current legal representative.

11. On 16 June 1995 he was brought before his commanding officer and a charge sheet was read out to him. It recorded one charge of obtaining property by deception (fraudulently claiming motor mileage allowance – "MMA") contrary to section 15(1) of the Theft Act 1968. An offence contrary to section 15(1) carries a maximum penalty of ten years' imprisonment.

12. On 4 July 1995 the SIB submitted its final report on its investigation into allegations concerning the fraudulent misuse of MMA and of railway warrants ("RW").

13. On 29 August 1995 a further charge sheet was read to him. It recorded eight additional charges of obtaining property by deception contrary to section 15(1) of the Theft Act 1968, charges also relating to MMA. The applicant was remanded in custody for trial by court-martial.

14. On 15 September 1995 he applied for legal aid under the army legal aid scheme. The legal aid certificate was sent by the Director of Army Legal Services to the applicant's unit on 6 October 1995 and the legal aid certificate was received by the applicant on 6 November 1995.

15. On 16 October 1995 the applicant requested his military medical records. The records were delivered in four batches between mid-November and 1 December 1995. The applicant's purpose in obtaining these records was the preparation of medical reports supporting his claim that he suffered from epilepsy.

16. On 11 December 1995, the applicant was released to open arrest. The court-martial hearing, fixed for 20 November 1995, was adjourned in light of the delay in receiving the medical records. The hearing was then fixed for 5 February 1996 as the applicant indicated that he would not be ready before that date.

17. On 5 February 1996 the hearing was adjourned at the applicant's request to allow him to undergo a brain scan. Hearing dates of 18 and 25 March 1996 were proposed but neither party could make the first date and the applicant could not make the second date. The applicant referred on both occasions to his continuing medical tests for epilepsy.

18. Given the applicant's allegations of epilepsy, in or around mid-1996 the prosecution decided to have the applicant attend its own medical experts. The applicant did not dispute that he was uncooperative in arranging appointments and that he left certain appointments prior to the examination being completed, even when he had been escorted by colleagues to the consulting rooms. He explained that he was not told that the prosecution had wished to enquire about the existence of his epilepsy. He had also been advised by his legal representative not to attend appointments that had not first been negotiated and certain initial appointments had not been notified to that representative. His appointment of 2 September was postponed by him to 30 September 1996 and that of 25 November was postponed by him to 11 December 1996.

19. In December 1996 the prosecution received its medical report. It found that there was sufficient doubt about the applicant's epilepsy to allow it to proceed with further charges against him. Accordingly, on 27 March 1997 the applicant was charged with 18 additional offences of obtaining property by deception contrary to section 15(1) of the Theft Act 1968 (concerning the misuse of RW).

20. However, since the new court-martial system was coming into force on 1 April 1997 (pursuant to the Armed Forces Act 1996), it was decided to proceed against the applicant afresh under that new system.

21. On 30 July 1997 the applicant's representative was notified that the new Army Prosecuting Authority (“APA”) was ready for trial. By 31 July 1997 the APA had referred all the charges for trial by court-martial.

22. On 19 August 1997 the Army Criminal Legal Aid Authority (“ACLAA”) wrote to the applicant's representative referring to his letter of April 1996, confirming that legal aid on the MMA charges - which had been initially granted to the applicant's first representatives – had been transferred to the applicant's present representatives and apologising for the delay in that respect. That letter also referred to the additional RW charges and indicated that the ACLAA was currently organising legal aid for those matters also.

23. On 12 September 1997 the applicant's unit completed the legal aid form for the RW charges, the form was signed by the applicant (by which

he certified that all the information was true) and his unit submitted the form to the ACLAA.

24. On 6 October 1997 the ACLAA requested him to submit certain information omitted from the legal aid form including his capital, his savings, details of the award of damages in his favour in October 1996 (see below) and copies of his bank statements for the last 12 months. He was asked to respond quickly in order to allow the processing of the legal aid application with the minimum of delay. The applicant maintained that he replied by letter dated 8 October 1997. In the copy of that letter submitted to the Court, the applicant stated that his application had been correct, that he had not kept his bank statements and that if they were required it would take a week or so to obtain duplicates from the bank. The ACLAA contended that it had no record of having received that letter and it was not until 21 November 1997 that it became aware that the applicant claimed to have sent a letter.

25. On 24 November 1997 the applicant wrote to the ACLAA repeating what he had said in his letter of 8 October 1997 but still not enclosing his bank statements. On 26 November 1997 the applicant's commanding officer wrote to ACLAA enclosing the applicant's letters of 8 October and 24 November 1997 and copies of his bank statements which the applicant had collected from his bank under military escort. It was also noted that the applicant had declined to give details of the damages awarded to him in October 1996 but that he had confirmed that he had bought a house for 50,000 pounds sterling (GBP) in January 1997.

26. On 27 November 1997 the applicant was formally referred for trial by general court-martial. A hearing had been already fixed for 1 December 1997, a date found to be suitable for the parties, including the 56 witnesses the applicant envisaged calling. However, on 1 December 1997 the applicant obtained an adjournment of the hearing because legal aid for the RW charges had been granted on that day.

27. On 12 January 1998 the applicant wrote to the APA arguing that that his referral for court-martial was invalid as it was not in accordance with the relevant regulating provisions and that it was an abuse of process given the delay to date. A preparatory hearing fixed for 27 March 1998 was adjourned because the applicant did not appear and because the Court-Martial Administration Officer ("CMAO") had not summoned the military witnesses.

28. The applicant's claim that the proceedings were invalid was heard by the Judge Advocate on 22-26 June 1998 who rejected the claim. In finding that the delay did not amount to an abuse of process, the Judge Advocate stated that:

> "... there has been ... considerable delay in this matter. This has been delay which is just not acceptable. ... In my view much of this delay was caused by an unsuitable bureaucratic pre-trial process. With the benefit of hindsight, some of those responsible

> for working that process could have made things better by applying a greater degree of urgency whilst operating those procedures; ... One has in this situation a great deal of sympathy with the defence, although I am bound to say that the fault lies principally with the system rather than with the individuals responsible for working that slow bureaucratic process. ... there has been no significant contribution by the defence to this long and unjustifiable delay."

29. The CMAO then offered a court-martial hearing date in September 1998 but the applicant applied to the High Court on 14 July 1998 for leave to apply for judicial review of the decision of the Judge Advocate. He challenged the decision (of 27 November 1997) to refer him for trial by court-martial. He further submitted that the court-martial should be stayed as an abuse of process on two grounds: that those responsible for the course of the proceedings had defaulted in their duties and because of delay.

30. On 4 November 1998 the High Court directed that the judicial review application be made on notice to the respondent party and it was listed for hearing (for a maximum of two hours) on 26 March 1999. On that date the applicant's solicitor indicated for the first time that the judicial review hearing would probably take two days and the hearing was adjourned. It was re-fixed for 27 July 1999. Prior to the hearing of 27 July 1999 the applicant abandoned his challenge to the decision to refer him for trial by court-martial. At the hearing on that date the Court rejected both grounds for the claim of abuse of process.

31. The court-martial hearing was then re-fixed for 15 November 1999 but the applicant did not appear.

32. The court-martial was rescheduled for 22 November 1999 and the court-martial proceeded on that date. The applicant pleaded guilty to obtaining property by deception to the value of GBP 15,000. He was sentenced to 14 months' imprisonment, of which he was to serve a further 7 months. The Judge Advocate commented that the delay in the case had been inordinate. He noted that, while the early delays had been avoidable, the delays since 1998 were attributable to the applicant who had used every delaying tactic.

33. The applicant did not, prior to or during the court-martial, disclose his medical reports.

34. By letter dated 17 December 1999, the applicant was informed of the reviewing authority's decision to reduce his sentence to three months' imprisonment. On 15 January 2000 a single judge of the Courts-Martial Appeal Court rejected his application for leave to appeal to that court.

B. Other proceedings

35. In November 1995 the applicant commenced habeas corpus proceedings in the High Court requesting his release on the grounds, *inter alia*, that he had not been given a formal hearing at which he was informed

of the case against him and afforded an opportunity to present his own case for release. In their pleadings, the army authorities admitted that due to an "administrative oversight" the applicant had not been charged until 16 June 1995. Although the army authorities initially accepted that his detention between 27 May and 16 June 1995 was therefore unlawful, they argued later in the pleadings that that detention was, despite the oversight, lawful. On 11 December 1995, further to the army authorities' undertaking to the High Court, the applicant was released to open arrest. In mid-1996 he was released from open arrest and sent on leave.

36. On 12 February 1996 the applicant instituted further proceedings in the High Court for compensation for, *inter alia*, unlawful detention between 27 May and 11 December 1995. The Ministry of Defence accepted that his detention between 27 May and 16 June 1995 had been unlawful. Various other admissions were made by the army authorities as regards the failure properly to complete certain reports regarding his ongoing detention but it was denied that such omissions rendered his detention unlawful. The case was settled on 21 October 1996 when the applicant was paid a sum of money and his costs.

THE LAW

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

37. The applicant complained about the length of the court-martial proceedings against him. He invoked Article 6 of the Convention, which Article, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Applicability of Article 6 § 1

38. The Court notes that the court-martial proceedings against the applicant concerned numerous charges of obtaining property by deception contrary to section 15(1) of the Theft Act 1968 for which the maximum penalty was ten years' imprisonment. Whether or not the present applicant actually risked that sentence on the facts, he was sentenced to 14 months' imprisonment, reduced on appeal to 3 months' imprisonment. Accordingly, the court-martial proceedings were determinative of a criminal charge (Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, §§ 80-85).

B. Period to be taken into consideration

39. As noted in its decision on the admissibility of this case, the Court recalls that the proceedings began on 1 June 1995 with the applicant's interview (Eckle v. Germany, judgment of 15 July 1982, Series A no. 51, § 73) and ended on 15 January 2000 with the decision of the Courts-Martial Appeal Court. They therefore lasted 4 years, 7 months and 15 days.

40. While the proceedings were considered by four instances (the court-martial, the High Court, the reviewing authority and the Courts-Martial Appeal Court), the latter review and appeal were completed within two months of the main court-martial hearing. Most of the delay therefore took place prior to the first instance (court-martial) hearing.

C. Merits of the complaint

41. According to the applicant, the length of the proceedings constitutes a breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

42. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

43. As to the complexity of the case, the Court notes that the charges were not of themselves complex, much of the evidence was documentary, there was only one defendant and all charges related to the same legal issue (obtaining property by deception). The Court considers therefore that the length of the proceedings cannot be explained by the complexity of the case.

44. As to the conduct of the applicant, the Court considers that the applicant was entitled to pursue his defence interests through the reasonable use of procedures available, in particular to make an abuse of process application on the grounds of delay, even though such applications would inevitably postpone the court-martial hearing date. However, the applicant can still be held responsible for delays imputable to him in pursuing those applications and during the court-martial process itself.

In this respect, the Court notes that between October 1995 and December 1996 the applicant requested various medical records and tests, then failed to co-operate with the prosecution's medical expert and, in the end, did not disclose his own medical reports. It can also be said that he unnecessarily contributed to the delay in the fixing of the hearing date of 1 December 1997. That date was fixed to accommodate, not only the prosecution, but 56 witnesses the applicant proposed to call, none of whom was ever called to

give evidence since he eventually pleaded guilty. The applicant was responsible for the adjournment of the judicial review proceedings between 26 March and 27 July 1999 and he did not attend on 15 November 1999, the date to which the court-martial hearing had been rescheduled. Finally, the Court observes that in November 1999 the Judge Advocate found the applicant's "delaying tactics" responsible for much of the delay since 1998.

Nevertheless, the Court does not consider that the applicant's conduct alone explains the delay in bringing the proceedings before the court-martial.

45. As to the conduct of the relevant authorities, the Court considers that at a certain point in the proceedings, which it would place in or around December 1996, it was incumbent on the authorities to take firmer control of the proceedings in order to ensure their speedy conclusion. It notes that the Judge Advocate found, in June 1998, that the individuals responsible for the court-martial system could have improved matters by applying a greater degree of urgency to the procedures. While he also expressed the view that much of the delay until June 1998 had been caused by the system which he described as an "unsuitable bureaucratic pre-trial process", the Court recalls, in this respect, 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 the requirements of this provision (see, for example, Portington v. Greece, judgement of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 33, and *Del Federico v. Italy*, no. 35991/97, § 21, 4 July 2002, unreported).

46. In addition, the authorities should have been particularly diligent from December 1996 to avoid further delays which could be considered to have been completely or mainly attributable to them.

In this latter respect, the Court notes that it took four months after receipt of its medical report in December 1996 for the military authorities to pursue the RW charges against the applicant (27 March 1997), charges in respect of which the SIB had completed its investigation as early as July 1995. While it was reasonable for the military authorities to then await the coming into force of the new court-martial system on 1 April 1997 given the Court's judgment in the Findlay case (Findlay v. the United Kingdom, judgment of 25 February 1997, *Reports* 1997-I), an early court-martial hearing date should have been fixed. Indeed the APA was ready for trial and had referred all charges for court-martial by July 1997.

Nevertheless, the next date fixed for a court-martial hearing was 1 December 1997. It appears that the delay in fixing that date and the later vacating of that date related to a delay in granting legal aid in respect of the RW charges. While there is some dispute as to whether the applicant had sent a letter (of 8 October 1997) and while he again appeared uncooperative as regards the provision of certain information required for the grant of legal aid, the RW charges were laid against him on 27 March 1997 but the

authorities only began to address the extension of legal aid to cover those RW charges in August 1997.

Moreover, the application for judicial review was made on 14 July 1998. However, it was not until November 1998 that the High Court fixed a hearing date for the application and it fixed a date in March 1999, over four months later. While the judicial review proceedings ended in July 1999, the first court-martial hearing date fixed was 15 November 1999.

47. In all the circumstances, the Court considers that, although significant periods of delay can be imputed to the applicant, the proceedings against him were not pursued with the diligence required by Article 6 § 1. There has accordingly been a violation of that provision, in that the criminal charges against the applicant were not determined within "a reasonable time".

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed GBP 5,000 as compensation for pecuniary damage suffered by him. The Government pointed to the delays attributable to the applicant, to the comments of the Judge Advocate in November 1999 in this respect and to the fact that the applicant then pleaded guilty to the charges. Accordingly, they argued that the applicant was entitled to no, or at most to nominal, compensation.

50. 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. However, 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 (*Davies v. the United Kingdom*, no. 42007/98, § 38, 16 July 2002, unreported).

51. In the present case, it is reasonable to assume that the applicant suffered some distress and frustration exacerbated by the unreasonable length of the proceedings. Taking account to the significant periods of delay imputable to the applicant, the Court awards 2,500 euros (EUR) under this head.

B. Costs and expenses

52. The applicant claimed reimbursement in the sum of GBP 3,500 being the costs' award against him in favour of the State after his unsuccessful judicial review proceedings. He also claimed reimbursement of his own costs of those proceedings in the sum of GBP 11,600.00 approximately (exclusive of value-added tax – "VAT"). The Government argued that those proceedings mainly concerned abuse of process and not delay as such, that he could have argued the matter of delay in mitigation of sentence and that the decision and costs' order of the High Court were perfectly reasonable in light of the applicant's subsequent plea of guilt. They noted that the adjournment of the High Court proceedings from March to July 1999, imputable to the applicant, would have unnecessarily augmented the costs. The costs claimed were not, in any case, reasonable as to quantum.

53. The applicant also claimed approximately GBP 1,430 (also exclusive of VAT) being the costs and expenses of the Convention proceedings, a sum which the Government accepted was reasonable. Finally, the applicant claimed reimbursement of a sum of GBP 150 in respect of his disbursements. He did not specify to which proceedings the disbursements referred and the Government did not specifically refer to this sum in their observations.

54. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (*Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX). The Court further recalls that the costs of the domestic proceedings can be awarded if they are incurred by applicants in order to try to prevent the violation found by the Court or to obtain redress therefor (see, among other authorities, the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 18 October 1982, Series A no. 54, § 17, and *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, §§ 30-33, 25 July 2000, unpublished).

55. As to the costs claimed in respect of the judicial review proceedings, the Court notes that the costs claimed covered all of the High Court proceedings, whereas only one of the three grounds included in the initial application to the High Court related to the issue of delay. The costs of the applicant and of the authorities associated with the other two grounds (one of which was abandoned by the applicant prior to the High Court hearing in July 1999, the third being rejected by the High Court) cannot therefore be considered as having been incurred in an attempt to prevent or redress the violation found by this judgment. Furthermore, given the delay between March and July 1999 noted above as attributable to the applicant, it is

reasonable to consider that such delay may have involved a related increase in an applicant's costs (*Bouilly v. France*, no. 38952/97, § 33, 7 December 1999, unreported).

56. Accordingly, the Court concludes that the legal costs and expenses of the domestic proceedings for which the applicant claims reimbursement cannot all be considered to have been necessarily incurred or to be reasonable as to quantum.

57. The Court further notes that the Government do not contest the reasonableness of the sum of GBP 1,430 claimed in respect of the costs and expenses of the Convention proceedings or the applicant's claim concerning disbursements. The Court does not consider the sums claimed to be unreasonable.

58. In such circumstances, and making an assessment on an equitable basis, the Court awards the applicant EUR 6,500 (inclusive of VAT), in respect of his costs and the costs paid to the State, arising out of the judicial review proceedings. It also awards the applicant EUR 2,500 (inclusive of VAT) in respect of the costs and expenses of the Convention proceedings and in respect of his claim for disbursements.

The total award in respect of the applicant's claim for reimbursement of costs and expenses amounts therefore to EUR 9,000 (inclusive of VAT).

C. Default interest

59. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], application no. 28957, § 124, to be published in ECHR 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 to be converted into pounds sterling at the date of settlement:

(i) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage;

(ii) EUR 9,000 (nine thousand euros) in respect of costs and expenses inclusive of any value-added tax that may be chargeable;

(b) that, from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 December 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Matti PELLONPÄÄ
President