



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

THIRD SECTION

CASE OF OBASA v. THE UNITED KINGDOM

(Application no. 50034/99)

JUDGMENT

STRASBOURG

16 January 2003

FINAL

16/04/2003

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 Obasa v. the United Kingdom,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Sir Nicolas BRATZA,
Mr P. KÜRIS,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 December 2002,

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

PROCEDURE

1. The case originated in an application (no. 50034/99) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, Olubukunola Obasa (“the applicant”), on 30 April 1999.

2. The applicant, who had been granted legal aid, was represented by Pedro Emmanuel Solicitors, lawyers practising in London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr I. Grainger of the Foreign and Commonwealth Office, London.

3. The applicant alleged that the proceedings in which she claimed discrimination at work took an unreasonable length of time contrary to Article 6 § 1 of the Convention.

4. The application was allocated to the Fourth 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. On 30 November 2000, the Court declared part of the application inadmissible and adjourned examination of the complaints relating to length of proceedings.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section. By a decision of 15 November 2001, the Court declared the remainder of the application admissible.

7. The applicant and the Government each filed observations concerning the issue of just satisfaction. The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

8. The applicant, Olubukunola Obasa, is a United Kingdom national, who was born in 1961 and lives in Wellingborough.

9. The applicant commenced employment as a social worker with the London Borough of Islington ("the Council") on 4 September 1989. In April 1991, she submitted a formal complaint to the Council's principal Equal Opportunities Officers alleging *inter alia* harassment and refusal of a promotion on grounds of race. She was interviewed by investigating officers in October 1991.

10. On 9 December 1991, the applicant presented an originating application to the Employment Tribunal alleging that she had been discriminated against as a black woman with a disability, *inter alia*, due to the decision to give a promotion to another employee instead of herself, the failure to transfer her to another post and the failure to assign her to a higher grade by giving due recognition to her professional qualifications. In her application, she relied on events going back to the commencement of her employment in 1989.

11. On 23 January 1992, one of the Council's investigating officers informed the applicant that her complaints had been found to be unsubstantiated. The applicant sought to appeal the rejection of her complaints pursuant to the Council's internal grievance procedure.

12. The Employment Tribunal held a hearing on 9 June 1992, at which the parties agreed that under section 68(1) of the Race Relations Act 1976, which required that complaints be presented within three months of the act complained of, the applicant could not rely upon events taking place before September 1990. Determination of the merits was considered to require detailed evidence and the matter was reserved for a further hearing.

13. On 24 June 1992, the Council made a request for further and better particulars of the originating application. The applicant replied on 24 November 1992.

14. While in the ordinary course of events the hearing on the merits would have been listed for hearing in the first half of 1993, the Council applied to the Employment Tribunal for the merits hearing to be postponed, on the grounds that it would be preferable to await the outcome of the applicant's internal appeal. The matter was adjourned, the applicant making no objection to this adjournment.

15. The applicant's internal appeal was heard by the Council on 28 April and 4 May 1993. By letter dated 13 May 1993, she was informed that her appeal had been rejected. However, with regard to the applicant's transfer request, the Council committee was concerned at the lack of evidence that any serious consideration was given to this matter and expressed the view that steps should be taken to find the applicant alternative work and to expedite her transfer. Pursuant to this decision, instructions were given to

investigate options for a transfer. An offer of transfer was made to the applicant on 8 February 1994.

16. Following the determination of the internal appeal, the Tribunal resumed consideration of the applicant's case, listing the case for a merits hearing on 11-13 May 1994. The case lasted longer than anticipated by the parties and it was adjourned and re-listed. The Council had indicated to the Tribunal on 13 May that it would be possible to reach a negotiated settlement. In the event a settlement was not reached and the Tribunal re-convened on 7 November 1994 for a further four days.

17. On 20 December 1994, the Tribunal issued its decision, finding that there had been discrimination by her employer in a number of procedural aspects.

18. The proceedings were adjourned for the parties to reach agreement as to the damages payable. The Council had already met with the applicant's trade union representatives on 6 December 1994. Negotiations culminated in a meeting of 24 March 1995, in which the Council's legal representatives agreed a settlement figure with the applicant subject to the approval of the elected members of the Council. On 3 April 1995, the Council informed the applicant that their members had rejected their officers' recommendations and that no settlement was possible on the terms discussed. The applicant broke off the negotiations entirely the next day.

19. The Tribunal proposed listing the case in June 1995 but as these dates were not convenient for the Council and it appears that the applicant was not available in June 1995 the date was fixed for 11 September 1995. After a remedies hearing on that date, the Tribunal made the applicant an award of 24,952.51 pounds sterling (GBP), which decision issued on 9 October 1995.

20. The Council appealed to the Employment Appeal Tribunal ("EAT"). Its notice of appeal had been lodged on 27 January 1995, as it was required to be lodged within 42 days of the merits decision.

21. On 3 October 1995, an *ex parte* preliminary hearing was held by the EAT to determine whether the appeal had reasonable prospects of success. It ordered that the appeal should proceed to a full hearing and required the Employment Tribunal's notes of evidence to be disclosed. These consisted of some 50 pages. After their transcription, the EAT sent out a listing notice on 11 July 1996, giving a hearing date of 17 September 1996.

22. After the hearing, the EAT delivered judgment on 28 October 1996. It quashed the findings of discrimination.

23. On 12 December 1996, the applicant filed an application for permission to appeal to the Court of Appeal. Permission was granted by the Court of Appeal on 3 February 1997. The applicant lodged her notice of appeal on 11 February 1997. The bundles of documents were filed on 21 May 1997.

24. After a hearing, on 16 February 1998 at which the applicant was represented, the Court of Appeal rejected the applicant's appeal.

25. The Court of Appeal refused leave to appeal to the House of Lords on 19 March 1998.

26. On 27 March 1998, the applicant sought leave to appeal to the House of Lords. In her petition, she requested exemption under House of Lords Standing Order XIII from the lodgement fee as she was no longer in receipt of legal aid. In July 1998, the Appeal Committee of the House of Lords decided to waive the fee. The petition was then formally lodged in July 1998. The applicant supplied the transcripts necessary for the application on 30 November 1998. The House of Lords refused leave on 26 April 1999.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

27. The applicant complained of the unreasonable length of the proceedings in her discrimination claim. Article 6 § 1 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 ...”

A. Period to be taken into consideration

28. The applicant introduced her claim in the Employment Tribunal on 9 December 1991. Her final application for leave to appeal was rejected by the House of Lords on 26 April 1999. The proceedings lasted seven years, four months and seventeen days.

B. The Court's assessment

29. The Government argued that the bulk of the delay resulted from the fact that the applicant introduced her claims while her internal appeal was still pending. They submitted that it was reasonable and appropriate for the Tribunal to agree to an adjournment pending the outcome of the internal procedures. It was also reasonable to allow an adjournment pending settlement negotiations. In their view, the delay in the listing of the appeal in the Employment Appeal Tribunal was accounted for by the need to transcribe the notes of evidence from the tribunal below and that the applicant caused the delay before the House of Lords by failing to lodge the transcript for some months.

30. The applicant submitted that the length of proceedings was excessive and unnecessary and that responsibility for the delay lay with the tribunals and courts concerned.

31. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see, among other authorities, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV, § 19; *Horvat v. Croatia*, no. 51585/99, ECHR 2001-VIII, § 52).

32. As to the complexity of the case, the Court notes that the applicant had made numerous allegations concerning discrimination at work which undoubtedly raised difficult factual issues. It may be noted however that at the appeal instances, which did not have to rehear the evidence or re-assess the facts, the matters raised were not of particular legal complexity.

33. As regards the conduct of the applicant, the Court recalls that the applicant introduced her claims while the internal appeal procedures were pending and that she did not object to the Employment Tribunal (ET) adjourning the case pending their outcome. Nor did the applicant object to adjournment of the proceedings after the ET's decision on the merits for the parties to attempt to reach a settlement on quantum. These periods however do not account for all of the delay, in particular in the time taken by the various courts to list the hearings and issue their judgments.

34. In that regard, it may be observed that although the internal appeal ended on 13 May 1993 the ET did not list the case for hearing until a full year later in May 1994, when a further adjournment was made to November 1994 to complete the hearing of evidence. While the EAT held a preliminary hearing concerning the application for appeal from the ET on 3 October 1995 and ordered a hearing of the appeal, this hearing was not in fact listed until 11 July 1996 when the date was fixed for 17 September 1996. As the judgment was not given until some six weeks later, a delay of twelve months had occurred since the first instance's final decision on 9 October 1995. While the Government asserted the reason for the delay in listing was the necessity to have the notes of evidence of the ET Chairman transcribed – some 50 pages –, this does not satisfactorily account for the lapse of time in a case which was already old. Furthermore, though the applicant lodged her appeal with the Court of Appeal on 12 December 1996 a hearing was not held for over fourteen months, on 16 February 1998, and it took another thirteen months between the lodging of the applicant's petition with the House of Lords and its summary refusal of leave.

35. Even though large parts of the delay at first instance may be regarded as reasonable or consented to by the applicant, the Court notes that the three appeal levels consistently took a year or over to deal with her

applications. While often a year per instance may generally be taken as reasonable, the overall length of time must be taken into account. The Court is not persuaded that for a case, lodged in 1991, the first instance and appellate courts dealt with the case with the necessary expedition.

36. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, in particular to the overall duration of the proceedings, the Court considers that the length of the proceedings complained of failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed as pecuniary damage a total of GBP 41,274.43, which included the amount of the award made by the ET of GBP 24,952.51 plus interest at 8% and GBP 689.03 in respect of the seven days annual leave that she had to take for the hearing before the ET. For non-pecuniary loss, she claimed GBP 250,000 referring to her ill-health (she suffered from sickle cell anaemia), the stress and anguish suffered at work, the adverse impact on her reputation at work, impact on her career and injury to her feelings due to the denial of justice in her complaints about race and disability discrimination.

39. The Government submitted that the ET award had been overturned on appeal and had no connection with any breach in the reasonable time requirement in issue in these proceedings before the Court. No pecuniary loss had been established in that respect. They also submitted that the amount claimed for non-pecuniary loss was excessive and in any event related largely to the suffering caused by the alleged discrimination at work and not the breach in this case. There was no substantiation of any damage to her reputation or to her health caused by the proceedings as opposed to her own conduct or personal circumstances. A finding of a violation would in their view constitute just satisfaction for any breach.

40. As regards the applicant's claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain*,

judgment of 13 June 1994 (Article 50), Series A no. 285-C, pp. 57-58, §§ 16-20; *Cakıcı v. Turkey* judgment, of 8 July 1999, *Reports* 1999-IV, § 127). The Court finds no such causal connection arising in the present case between the award for damages made by the ET, overturned on appeal, and the unreasonable length of proceedings found to disclose a breach of Article 6 § 1 of the Convention. Nor does it consider that any claim can be made for time taken off work by the applicant to pursue her claims in the ET. No award is accordingly made for pecuniary damage.

41. Turning to non-pecuniary loss, the Court does not find it substantiated that the applicant suffered any injury to health, reputation or career due to the length of the proceedings in this case which would justify the amount claimed. It does consider that she must have certainly suffered some non-pecuniary damage, such as distress and frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by the finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicants a total sum of 5,000 euros (EUR) under this head.

B. Costs and expenses

42. The applicant claimed GBP 6,377.48 for legal expenses arising out of the domestic proceedings and GBP 92,602.45 for legal expenses arising out of her application to this Court.

43. The Government denied that legal costs for domestic proceedings were relevant under this heading. They submitted that the staggering amount claimed for the Strasbourg proceedings were unreasonable and disputed that it was necessary to work the hours claimed (for example, 179 hours for observations of no particular complexity and 76 hours for observations on just satisfaction).

44. Having regard to the relative simplicity of the subject-matter and procedure adopted before the Court in this case, the Court finds the amount claimed by the applicant cannot be regarded as either necessarily incurred or reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II, § 79). Taking into account the legal aid paid by the Council of Europe, it awards the sum of EUR 5,000 for legal costs and expenses.

C. Default interest

45. 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.

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, plus any tax that may be chargeable, the following amounts to be converted into pounds sterling at the date of settlement:
 - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros) in respect of costs and expenses;
 - (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 16 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President