



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

THIRD SECTION

CASE OF CHALKLEY v. THE UNITED KINGDOM

(Application no. 63831/00)

JUDGMENT

STRASBOURG

12 June 2003

FINAL

12/09/2003

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 Chalkley 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 L. CAFLISCH,
Mr R. TÜRMESEN,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 22 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 63831/00) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, Mr Tony Michael Chalkley (“the applicant”), on 20 March 1995.

2. The applicant was represented by Mr J. Welch of Liberty, London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office.

3. The applicant complained about the use of a surveillance device in his home, invoking Articles 8 and 13 of the Convention.

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 26 September 2002, the Court declared the application partly admissible, partly inadmissible.

6. The applicant and the Government each filed observations on just satisfactions (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1961.

8. In March 1994 the applicant was suspected by police officers in the Cambridge Constabulary of involvement in robbery. The view was taken by the Cambridgeshire Regional Crime Squad that it was necessary to place a hidden battery-powered listening and recording device in the applicant's home. An application was therefore made to the Chief Constable for the instalment of such a device, which was authorised on 21 June 1994, pursuant to the non-statutory Home Office Guidelines of 1984.

9. In order to install the device, the police decided to arrest the applicant and his partner in connection with another matter (credit card fraud) and to remove them and their children from their home. Enquiries into the credit card fraud had previously lapsed without any arrest or questioning of the applicant or his partner. However, DC Harrison of the Regional Crime Squad and WDC Fletcher, an officer in the intelligence bureau of the Cambridgeshire County Constabulary, decided to revive the investigation for the purpose of removing the applicant and his partner from their home for long enough to enable the installation of the listening device.

10. WDC Fletcher briefed three officers about purported grounds for arresting the applicant and his partner for credit card fraud, without informing them of the intended installation of the device.

11. At 6.15 a.m. on 8 July 1994 the three officers arrested the applicant's partner in her home and shortly thereafter arrested the applicant. Both were taken to the police station. The officers seized the keys to the applicant's home and car. Officers from the Regional Crime Squad then used the house key to enter the applicant's home and install the listening device. They also had a copy of the key cut to enable them to enter the house at a later date.

12. The applicant and his partner were released from police custody on the evening of 8 July 1994 after being interviewed. Neither was charged, but both were released on police bail and required to report back to the police station on 24 August 1994. The applicant's keys to his home and car were returned to him.

13. On 24 August 1994 the applicant and his partner attended the police station in accordance with their bail and were interviewed again. Neither was charged at that time or subsequently with credit card fraud. During their interview police officers entered their home using the duplicate key in order to renew the battery in the listening device.

14. During September 1994, police officers again entered the applicant's home to renew the battery in the listening device.

15. As a result of conversations that were recorded between the applicant and J, his co-defendant in the criminal proceedings, both men were arrested in September 1994. They were charged with conspiracy to commit robbery and burglary between 1 January 1993 and 9 December 1994.

16. The trial was at Peterborough Crown Court in October 1996. An application was made, in a *voir dire* procedure, on behalf of the defendants for the tape recorded evidence to be excluded under section 78 of the Police and Criminal Evidence Act 1984 on the basis that it had been obtained unlawfully and in breach of Article 8 of the European Convention on Human Rights. This application was rejected by the trial judge on 24 October 1996. The judge found that the officers who carried out the arrests on 8 July 1994 did have reasonable grounds for suspecting those whom they arrested and that if further information had arisen at the interviews or from the other enquiries which were carried out it was possible that charges would have been brought for those matters. He did find that the removal of the applicant's keys was in breach of the search and seizure requirements of PACE, that the taking and use of the house key constituted a civil wrong, that there was a trespass to the applicant's home and that minor criminal damage had taken place. However, balancing the various factors, including the fact that the tape-recordings amounted to confessions of serious crimes involving the possible use of firearms, that there was no suggestion of improper inducement or incitement to commit the offences and that there was no dispute about the content of the conversations, the judge ruled the evidence admissible.

17. As a result of the ruling on admissibility, the applicant and his co-defendant changed their pleas to guilty. They were each sentenced to ten years' imprisonment.

18. On 18 December 1997, after being granted leave to appeal, the applicant's appeal against conviction was dismissed by the Court of Appeal (*R. v. Chalkley and Jeffries* [1998] 2 All ER 155).

On 15 June 1998 the House of Lords refused the applicant's petition for leave to appeal.

In early 2001, the applicant was released on licence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Home Office Guidelines

19. Guidelines on the use of equipment in police surveillance operations (The Home Office Guidelines of 1984) provided that only chief constables or assistant chief constables were entitled to give authority for the use of

such devices. The Guidelines were available in the library of the House of Commons and were disclosed by the Home Office on application.

20. In each case, the authorising officer had to satisfy himself that the following criteria were met: (a) the investigation concerned serious crime; (b) normal methods of investigation must have been tried and failed, or must from the nature of things, have been unlikely to succeed if tried; (c) there was good reason to think that use of the equipment would be likely to lead to an arrest and a conviction, or where appropriate, to the prevention of acts of terrorism; d) the use of equipment was operationally feasible. The authorising officer had also satisfy himself that the degree of intrusion into the privacy of those affected by the surveillance was commensurate with the seriousness of the offence.

B. The Police Act 1997

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

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant invoked Article 8 of the Convention in respect of the use of a covert surveillance device by the police to record conversations in his home. Article 8 provides insofar as relevant:

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

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

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

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The applicant also contended there was no remedy available to him at national level in respect of his Article 8 complaint, contrary to Article 13 of the Convention, which provides:

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

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed pecuniary and non-pecuniary damage. He claimed 200 pounds sterling (GBP) to cover the costs incurred when he had the locks on his flat changed after he had become aware that the police had duplicate keys. He also submitted that it would be appropriate to award him compensation for the invasion of privacy and the length of time which he has had to wait to obtain redress which have caused him distress, anxiety and frustration. Such an award should be higher in his case than the

GBP 1,000 awarded in *P.G. and J.H. v. the United Kingdom* (no. 44787/98, ECHR 2001-IX) due to the element of contrivance involved.

30. The Government disputed that any pecuniary damage flowed from the alleged breach, arguing that there was no indication that if a proper procedure had not been in place the entry to the flat would not still have occurred. They considered that in this case, where there was no element of entrapment or oppression and the admitted breach only related to the lack of proper legal regulation of the use of surveillance devices, a finding of a violation should in itself constitute sufficient just satisfaction.

31. The Court recalls that the mode of entry of the police to plant the surveillance device was not as such the subject of the complaint by the applicant in this application, his complaints centring on the use of the surveillance device. Indeed, the trial judge found that the police use of the key and entry to the house amounted to civil wrongs (see paragraph 16 above), though it is not apparent that the applicant took any civil proceedings claiming for any damage flowing from their trespass. It is not persuaded therefore that the costs of changing the locks can be properly regarded as connected with the breach found in this case.

32. As regards non-pecuniary damage, the Court notes that in cases involving a similar breach based on the lack of legal basis for surveillance measures that finding of a violation provided sufficient just satisfaction (for example, *Khan*, cited above, 49, *Taylor-Sabori v. the United Kingdom*, no. 47114/99, judgment of 22 October 2002, § 28). While it is true that an award was made in *P.G. and J.H. v. the United Kingdom* (cited above), that case involved several breaches of Article 8, including the covert taping of the applicants' voices in the police station for identification purposes after the applicants had refused to give such samples voluntarily. In the circumstances of this case, it considers that the findings of violation constitute sufficient just satisfaction for any non-pecuniary damage caused to the applicant.

B. Costs and expenses

33. The applicant claimed legal costs and expenses totalling GBP 8,593.36 inclusive of value-added tax. This included fees to a solicitor and trainee solicitor of GBP 5,063.50 and fees to senior and junior counsel of GBP 2,643.75.

34. The Government considered that the fees claimed were on the high side, particularly as the case was identical to previous applications before the Court and as fees incurred in respect of the inadmissible part of the application should be discounted. They submitted GBP 3,000 was a more reasonable figure.

35. The Court recalls that it will award legal costs and expenses only if satisfied that these were necessarily incurred and reasonable as to quantum.

It agrees with the Government that this was a straightforward case, raising virtually identical issues to the above-mentioned *Khan* judgment. It awards EUR 4,800 in respect of costs and expenses, plus any VAT that may be payable.

C. Default interest

36. 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 8 of the Convention;
2. *Holds* that there has been a violation of Article 13 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *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, EUR 4,800 (four thousand eight hundred euros) in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement, plus any 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President