



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

THIRD SECTION

CASE OF MELLORS v. THE UNITED KINGDOM

(Application no. 57836/00)

STRASBOURG

17 July 2003

FINAL

17/10/2003

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 Mellors v. the United Kingdom,

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

Mr G. RESS, *President*,

Sir Nicolas BRATZA,

Mr L. CAFLISCH,

Mr R. TÜRMEŖ,

Mr B. ZUPANČIČ,

Mrs H.S. GREVE,

Mr K. TRAJA, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 30 January and 26 June 2003,

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

PROCEDURE

1. The case originated in an application (no. 57836/00) 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 Spencer James Mellors (“the applicant”), on 12 January 2000.

2. The applicant, who had been granted legal aid, was represented by Mr J. Carroll, a lawyer practising in Glasgow. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C. Whomersley of the Foreign and Commonwealth Office, London.

3. The applicant alleged that his criminal proceedings exceeded a reasonable time contrary to Article 6 § 1 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. On 19 June 2001, the Court rejected part of the application as inadmissible.

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.

7. By a final decision of 30 January 2003, the Court declared the application partly admissible.

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

THE FACTS

9. The applicant was born in 1964 and is currently serving a sentence of imprisonment in HM Prison Craiginches, Aberdeen.

10. The applicant was arrested on a charge of attempted murder arising out of a high speed car chase which occurred in the early hours of 29 October 1995. On 30 October 1995, he was arrested again, interviewed and cautioned in respect of a separate incident of rape and assault which also occurred during the early morning of 29 October 1995.

11. On 31 October 1995, the applicant appeared in court in respect of the various road traffic offences and the attempted murder of a police officer. On 7 November 1995, he was fully committed and remanded in custody on those charges (of which he was later acquitted).

12. On 30 November 1995, the applicant appeared before the Sheriff and was committed in respect of the rape charge.

13. On 24 June 1996, the trial began in the High Court. On 2 July 1996, the applicant was convicted, by a majority verdict, of all charges and sentenced to 9 years 9 months' imprisonment.

14. On 8 July 1996, the applicant lodged an intention to appeal with the High Court sitting as an appeal court. On 20 August 1996, a Note of Appeal was lodged.

15. On 26 September 1996, a single judge refused the appeal. The applicant appealed.

16. On 31 October 1996, the Note of Appeal was allowed by three judges in restricted terms relating to the direction given by the trial judge on the special defence of alibi.

17. On 20 December 1996, the appeal was set down to be heard. According to the Government, it did not take place as the applicant refused to leave prison. The applicant stated that contrary to statutory authority the prison governor refused to allow him to leave the prison wearing civilian clothes instead of a prison uniform for the hearing. A further hearing was fixed for 22 May 1997. On that date, the Crown requested, and obtained, an adjournment as the Advocate Depute was engaged abroad.

18. On 19 November 1997, the appeal was set down to be heard. It was discontinued due to lack of court time and pressure of other business. It was noted that the appeal was complex and would last half a day.

19. On 13 and 14 January 1998, there was another appeal hearing. As the applicant's solicitor had become aware that the prosecution had never

cited a witness, W. to appear at the trial, he had lodged and argued an additional ground of appeal on this point. Following argument, he sought to lodge further additional grounds of appeal. The appeal was continued to 13 February 1998 to enable him to do so.

20. On 13 February 1998, the High Court held that the failure to hear the evidence of W. resulted in unfairness and that further evidence should be heard. Lord Philip was designated as the judge to hear the evidence. On 28 May 1998, he fixed a date to take the evidence of W. On 20 August 1998, the hearing was adjourned as the applicant's counsel withdrew from acting on his behalf.

21. On 16 October 1998, W. gave evidence. In his note of 20 November 1998, Lord Philip gave his view of the credibility and reliability of W. The appeal was relisted for hearing on 8 January 1999 but the applicant's solicitors wrote to the court requesting that another date, possibly in the following week, be fixed due to the unavailability of counsel.

22. On 24 June 1999, the appeal was heard before the High Court.

23. On 22 July 1999, the judgment of the court was given by the Lord Justice General, Lord Rodger. It dismissed the applicant's appeal.

THE LAW

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

24. The applicant complained of the unreasonable length of the proceedings in his trial and appeal. Article 6 § 1 of the Convention 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

25. The applicant was arrested on the rape charge on 30 October 1995 and his appeal was finally rejected on 22 July 1999. The criminal proceedings lasted three years, eight months and twenty three days.

B. The Court's assessment

26. The applicant submitted that the case was not particularly complex. After conviction, his lawyers were not informed of the failure to cite the

witness W. for some time and any delay or complication arising from that derived from the trial Advocate Depute's improper conduct in the first place. Thereafter, there was delay due to lack of availability of the Advocate Depute and the lack of time allocated in the appeal court. He did not refuse to go to the first listed appeal hearing; the prison unjustifiably preventing him from attending in civilian clothing. He claimed that there was no explanation for the delay of eight and a half months between the taking of W.'s evidence and the appeal hearing.

27. The Government submitted that the period taken from 30 October 1995 to 22 July 1999 was reasonable in all the circumstances. The trial proceedings were complex and there were difficulties in obtaining samples from the applicant for forensic analysis. The appeal proceedings were also complex. Additional grounds of appeal were lodged and as a result the appeal court required to hear evidence, which had to be transcribed and reported upon. The appeal then had to be heard afresh on its merits. The applicant's conduct had contributed to the time taken, namely his refusal to come to court on 20 December 1996, the withdrawal of his counsel at the hearing set for 20 August 1998 and the request for adjournment of the appeal listed for January 1999. Any instances of delay by the authorities were minimal and were for justifiable reasons.

28. 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, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

29. The importance of what was at stake for the applicant, a serious criminal conviction and a sentence of imprisonment, is not in doubt.

30. As regards the complexity of the proceedings, these involved forensic investigation prior to the trial and on appeal, complications arose when the applicant's representatives raised new grounds of appeal in light of their discovery of events at trial concerning the witness W. It cannot be considered however that the proceedings presented any exceptional problems or difficulty.

31. Taking the period to the applicant's conviction on 2 July 1996, the Court observes that this occurred slightly more than eight months after the applicant was first questioned. This does not disclose any undue delay.

32. The appeal proceedings are more problematic, accounting for three years and two weeks of the overall period. The applicant lodged his intention to appeal promptly on 8 July 1996 but it was not for over another three years that the appeal was determined. This is, on the face of it, a long period for one instance of appeal.

33. The Government have argued that the applicant was responsible for part of the delay. While it appears however that the applicant failed to attend the first listing of his appeal on 20 December 1996, this was due to the refusal of the prison to allow him to leave in the civilian clothing which he was entitled to wear at his hearing. The following two adjournments cannot be regarded as attributable to the applicant, a hearing in May 1997 being vacated due to the absence abroad of the Advocate Depute for the Crown and a further hearing in October 1997 being adjourned due to pressure of business on the court itself. These last two adjournments resulted in a delay of over a year.

34. When the case came to be heard on 13-14 January 1998, the applicant's representative introduced new grounds of appeal relating to the witness W. This, as the Government pointed out, inevitably lengthened the appeal proceedings further. Nonetheless, the appeal court partially upheld these complaints and the applicant cannot be regarded as automatically responsible for any delay that followed, it being incumbent on the judicial authorities to examine any new grounds of appeal with appropriate expedition.

35. The decision was taken relatively quickly, on 13 February 1998, in response to the new grounds of appeal, to call the witness W. to give evidence. The applicant's counsel withdrew at the last moment from the initial hearing of evidence fixed in August 1998 and the lapse of time that followed until W. was heard on 16 October 1998 cannot be entirely attributed to the authorities. Lord Philip's note of evidence was drawn up on 20 November 1998. While the Government pointed out that the applicant's solicitors applied to adjourn the appeal hearing listed to follow on 8 January 1999, due to unavailability of counsel in that week, this does not explain why there was in fact a lapse of another five months before the case came back for its final hearing on 24 June 1999.

36. Having regard therefore to overall length of time taken on the appeal, and taking into account the lapse of time in bringing the appeal on for hearing and in relisting the case after the hearing of the witness, W., the Court considers that the appeal did not proceed with the necessary expedition and 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. Non-pecuniary damage

38. The applicant submitted that he had been in custody during the whole period of delay and that he should be awarded 4,000 pounds sterling (GBP) as non-pecuniary damage.

39. The Government argued that any delay was not such as justify an award of damages.

40. 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 of the contributory delay imputable to the applicant, the Court awards 2,800 euros (EUR) under this head.

B. Costs and expenses

41. The applicant claimed GBP 4,455.46 for legal costs and expenses, inclusive of value-added tax (VAT).

42. The Government submitted that this sum was excessive in the circumstances of this case.

43. Taking account of the fact that the bulk of the applicant's complaints were rejected as inadmissible and deducting the sums paid by way of legal aid by the Council of Europe, the Court awards EUR 2,800 for legal costs and expenses, inclusive of VAT.

C. Default interest

44. 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, to be converted into pounds sterling at the rate applicable at the date of settlement:
 - (i) EUR 2,800 (two thousand eight hundred euros) in respect of non-pecuniary damage;

(ii) EUR 2,800 (two thousand eight hundred euros) in respect of costs and expenses, inclusive of VAT;

(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 17 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Georg RESS
President