



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

SECOND SECTION

CASE OF PRICE and LOWE v. THE UNITED KINGDOM

(Applications nos. 43185/98 and 43186/98)

JUDGMENT

STRASBOURG

29 July 2003

FINAL

03/12/2003

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 Price and Lowe v. the United Kingdom,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Sir Nicolas BRATZA,

Mr GAUKUR JÖRUNDSSON,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 September 2002 and 8 July 2003,

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

PROCEDURE

1. The case originated in two applications (nos. 43185/98 and 43186/98) 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 two United Kingdom nationals, John Harding Price (introduced on 4 May 1998) and Mary Hazel Lowe (introduced on 12 August 1998).

2. The United Kingdom Government (“the Government”) were represented by their Agent, Mr C.A. Whomersley of the Foreign and Commonwealth Office.

3. The applicants alleged that the proceedings in which they were sued in respect of property in Florida were not dealt with within a reasonable time.

4. The applications were 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 applications were 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.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

7. By a decision of 3 September 2002 the Court declared the applications partly admissible, having in the meantime joined them on 28 November 2000.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. The applicants were born in 1929 and 1923 respectively. The applicant in application no. 43185/98 (“Dr Price”) is a consultant psychiatrist; the applicant in application no. 43186/98 (“Mrs Lowe”) is a medical secretary. They live in Lincoln.

10. The applicants, together with Dr Price’s wife, were sued by “K”, a former patient of Dr Price, in respect of property in Florida. The writ was issued on 12 February 1986. Before the action came to trial, the plaintiff was adjudicated bankrupt on 9 August 1989 and the trustee in bankruptcy continued the action.

11. The trial was set down to commence in the High Court in August 1994 but was postponed until the end of September 1994 because the judge was not available for the length of time needed for the hearing.

12. On the fourth day of trial, while K was being cross-examined, an adjournment was granted because K claimed to feel unwell. In the event, it emerged that no medical justification could be given for his continued non-attendance, but nonetheless he remained absent for the rest of the trial. Because of the delay caused by K’s non-attendance, the trial could not be concluded in September 1994 and had to be adjourned until January 1995. Judgment was given on 27 April 1995.

13. The judge accepted the argument of the applicants and Mrs Price that it was necessary to disregard K’s evidence because of his failure to remain for cross-examination. However, on the basis of the documentary evidence and that adduced by the applicants and Mrs Price, the judge found that the transfer of the Florida property should be set aside on the ground that the defendants had not been able to rebut the presumption of undue influence created by the discrepancy in the price they paid K for the property and its value at the time of the transfer, together with the doctor-patient relationship between Dr Price and K.

14. The formal record of the judge’s order was not prepared by the parties until 26 October 1995. The applicants and Mrs Price applied to the Court of Appeal for leave to appeal on 1 November 1995. The appeal

bundles were lodged on 4 October 1996. On 15 January 1997 the appeal was listed for hearing, and it was heard on 16 and 17 April 1997, on which last date the Court of Appeal gave judgment dismissing the appeal.

15. In connection with the moneys paid by Dr Price for the property, the Court of Appeal confirmed the decision of the trial judge that the sum should be repaid, but that no interest should be paid on it. The trial judge had based his decision on the fact that Dr Price “had had possession of the properties and receipt of the rents since the completion of the sale, subject only to the agreement to allow [K] to use number 212 in the early months”. Lord Justice Nourse regarded this as a “rough and ready result”, but one which would “reduce the opportunities for further dispute between the parties”.

16. On 19 April 1997 the applicants and Mrs Price were refused leave by the Court of Appeal to appeal to the House of Lords. On 30 March 1998 the applicants and Mrs Price were refused leave to appeal by the House of Lords.

THE LAW

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

17. The applicants allege a violation of Article 6 of the Convention in connection with the length of the proceedings at issue. Article 6 provides, so far as relevant, as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

18. The proceedings began on 12 February 1986 when K issued a writ against the applicants and Mrs Price. They ended on 30 March 1998 when leave to appeal to the House of Lords was refused by the House of Lords. They thus lasted a total of 12 years, one month and 18 days.

19. The Government contend that the length of the proceedings before the setting down of the case for trial in 1994 was attributable wholly to the conduct of the parties, and that it was for the parties to apply for an appropriate direction if they had perceived it to be in their interests to do so. After the case had been set down, the case was dealt with by three instances between August 1994 and March 1998, and the only periods of delay for which the authorities were responsible were: one month when the commencement of the trial was adjourned; the six months’ period before the Court of Appeal heard the case, during which time arrangements for the hearing were made, and the four months’ period for delivery of the House of

Lords' decision, during which period the judicial members of the House examined the complaints and the supporting material.

20. 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).

21. Once the case had been set down for trial, the case proceeded through three levels of jurisdiction in a little over three and a half years, notwithstanding the complicating factors that the plaintiff had been declared bankrupt and the property at issue was out of the jurisdiction. The Court is aware that some discussion between the parties may be necessary in civil proceedings to clarify the disputed issues, but considers that that period of three and a half years could have been considered a "reasonable time" in this case.

22. However, the question is whether the Government can be held responsible for the period preceding the trial of the action, even though the parties knew, or should have known, that the High Court would not act of its own motion. The Government refer, in this respect, to the case of *Union Alimentaria Sanders v. Spain* (judgment of 7 July 1989, Series A no. 157, § 35).

23. The Court has held on a number of occasions that a principle of domestic law or practice that the parties to civil proceedings are required to take the initiative with regard to the progress of the proceedings, does not dispense the State from complying with the requirement to deal with cases in a reasonable time (see *Buchholz v. Germany* judgment of 6 May 1981, Series no. 42, p. 16, § 50; *Guincho v. Portugal* judgment of 10 July 1984, Series A no. 81, p. 14, § 32; *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, p. 11, § 25; *Mitchell and Holloway v. the United Kingdom*, no. 44808/98, judgment of 17 December 2002). The manner in which a State provides for mechanisms to comply with this requirement – whether by way of increasing the numbers of judges, or by automatic time-limits and directions, or by some other method – is for the State to decide. If a State lets proceedings continue beyond the "reasonable time" prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay.

24. In the light of the preceding comments, and even though the applicants did not put the matter of the length of the pre-trial proceedings to the High Court, the Court finds that the proceedings in the present case were not dealt with within a "reasonable time", as required by Article 6 of the Convention.

25. It follows that there has been a violation of Article 6 § 1 of the Convention.

2. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. Dr Price claimed pecuniary damage under a number of heads, including the sums paid to his domestic lawyers in connection with the purchase of the property, amounting to £346,885 on 30 December 2002, plus interest on his share of that figure. He also claimed secretarial costs of £9,875, printer's costs of £1,886.28, transport costs of £1,400 and loss of earnings of about £300,000

28. Dr Price next claimed non-pecuniary damage of £200 per week, making a total of £197,200 up to December 2002, and exemplary damages.

29. Mrs Lowe claimed pecuniary damage of £232,093.44 in respect of money held by domestic lawyers, £61,892.65 in respect of money paid in eviction proceedings in 2002, £2,210 in respect of travel costs, and some £1,800 in respect of costs in dealing with bankruptcy proceedings.

30. She also claimed non-pecuniary damage of £98,600 up to December 2002, and exemplary damages of, she suggested, £100,000.

31. The Government noted that the admissible complaint in the present case related to the length of the proceedings only, and contended that much of the material submitted was irrelevant. They added that, as the applicants remained in possession of the properties throughout, the length of the proceedings was, with hindsight, to the applicants' benefit. Further, they underlined that the blame for the principal delay could not be laid at the door of the authorities, and that it had been open to the applicants to reduce that delay, but they chose not to. The Government considered that a finding of a violation would constitute sufficient just satisfaction.

32. As to the applicants' claims for pecuniary loss, the Court recalls that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see, amongst other authorities, the *Barberà, Messegue and Jabardo v. Spain* judgment of 13 June 1994 (Article 50), Series A no. 285-C, pp. 57-58, §§ 16-20; the *Cakıcı v. Turkey* judgment of 8 July 1999, *Reports of Judgments and Decisions* 1999-IV, § 127). The Court finds no such causal connection in the present

case between the heads of loss claimed and the unreasonable length of proceedings found to disclose a breach of Article 6 § 1 of the Convention.

33. Turning to non-pecuniary loss, the Court does not find it substantiated that the applicants suffered, as a result of the breach in this case, any concrete injury to health, family life or career. Whilst Dr Price's career has met with certain difficulties over the period of the proceedings and, since it is not possible to determine to what extent, if at all, those difficulties were due to the unreasonable length of the proceedings. The Court notes, and this is not affected by the Court's above finding that the State may not leave responsibility for compliance with the "reasonable time" requirement of Article 6 to the parties, that it would have been open to the applicants to apply to the High Court for matters to be expedited in the period before the case was set down for trial, but that they chose not to. Taking into account the circumstances of the case, and making its assessment on an equitable basis, the Court awards the applicants the sum of 1,000 euros (EUR) each under this head.

B. Costs and expenses

34. The applicants claimed costs and expenses. Mrs Lowe, in particular, referred to a solicitors' bill which had not been received on 30 December 2002.

35. The Government did not comment specifically on the claim for costs and expenses.

36. The applicants were not represented in the proceedings before the Court, although they have had the benefit of advice from domestic solicitors at the post-admissibility stage. Much of the material submitted by Dr Price has concerned matters beyond the scope of the case. Bearing in mind that amounts claimed by the applicant must be necessarily incurred and reasonable as to quantum (see, amongst other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II), the Court awards the applicants the sum of EUR 500 each for legal costs and expenses, inclusive of VAT, this sum to be converted to pounds sterling at the date of settlement.

C. Default interest

37. 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

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* by four votes to three that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into pounds sterling at the date of settlement;
3. *Holds* unanimously that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 500 (five hundred euros) in respect of costs and expenses, to be converted into pounds sterling at the date of settlement;
4. *Holds* unanimously 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;
5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Sir Nicolas Bratza, Mr Gaukur Jörundsson and Mrs Thomassen is annexed to this judgment.

J.-P.C.
S. D.

PARTLY DISSENTING OPINION OF JUDGES Sir Nicolas
BRATZA, GAUKUR JÖRUNDSSON
AND WILHELMINA THOMASSEN

While we agree that there has been a violation of Article 6 paragraph 1 of the Convention by reason of the length of the proceedings in which the applicants were involved and while we accept that the applicants should be awarded EUR 500 each in respect of legal costs and expenses, we are unable to share the view of the majority of the Chamber that the applicants should also be awarded EUR 1,000 each in respect of non-pecuniary damage. In our view, the circumstances of the present case are such that the finding of a violation should itself amount to sufficient just satisfaction in respect of any non-pecuniary damage suffered.

We recall in this regard that Article 41 requires the Court to afford just satisfaction to the injured party only “if necessary”. The question whether such an award is necessary depends on the circumstances of the individual case. Although it has in recent years been the normal practice of the Court to award compensation where a complaint concerning the length of proceedings has been upheld, such an award should never in our view automatically follow from such a finding. The Court must in principle be satisfied that the unjustified delay in the case has given rise to moral damage, whether in the form of damage to health, anxiety, distress, frustration or otherwise, and that, in all the circumstances, an award of compensation is called for.

We are not satisfied that this is so in the present case. In this regard, we note that the Court has found the applicants’ claim to have suffered injury to health, family life or career in consequence of the length of the proceedings to be unsubstantiated (paragraph 33 of the judgment). We would in addition observe that the applicants were the defendants in the proceedings brought by K, in which he claimed to rescind the contract of sale to the applicants of his property in Florida. K’s claim was upheld by the domestic courts on the ground that the applicants had been unable to rebut the presumption of undue influence created by the discrepancy in the price they had paid K for the property and its value at the time of transfer and by the doctor-patient relationship between the first applicant and K. It is moreover clear from the judgment of the Court of Appeal that the first applicant had enjoyed possession of the property in dispute during the course of the proceedings and had been in receipt of rents from the letting of the property since the date of completion of the sale, subject only to the agreement to allow K to use part of it in the early months following the sale. As is further pointed out in the judgment, the applicants took no steps to apply to the court to expedite the proceedings, although it was open to them to do so if they considered that insufficient progress was being made. While, for the reasons given in paragraph 23 of the judgment, such a failure cannot affect

the responsibility of the respondent State under Article 6 of the Convention to secure that legal proceedings do not exceed a reasonable time, it remains in our view a material factor in determining what, if any, award in respect of non-pecuniary damage should be made under Article 41 of the Convention. In our view, no such award was justified in the present case.