



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

FOURTH SECTION

**CASE OF VON BÜLOW v. THE UNITED KINGDOM**

*(Application no. 75362/01)*

JUDGMENT

STRASBOURG

(7 October 2003)

**FINAL**

*07/01/2004*

*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 von Bülow v. the United Kingdom,**

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

Mr M. PELLONPÄÄ, *President*,

Sir Nicolas BRATZA,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 6 May and 16 September 2003,

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

**PROCEDURE**

1. The case originated in an application (no. 75362/01) 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 Egon von Bülow ("the applicant"), on 24 July 2001.

2. The applicant, who had been granted legal aid, was represented by Messrs Atter McKenzie, solicitors practising in Evesham. The United Kingdom Government ("the Government") were represented by their Agent, Mr J. Evans of the Foreign and Commonwealth Office, London.

3. The applicant alleged that he had not had a proper review of the lawfulness of his continued detention as a mandatory life prisoner, invoking Article 5 § 4 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. By a decision of 2 July 2002, the Court declared the case partly inadmissible and adjourned the remainder for observations of the Government. By decision of 6 May 2003, the Court declared the remainder of the application admissible.

6. The applicant, but not the Government, 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

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, Mr Egon von Bülow, is a United Kingdom national, who was born in 1946 and is currently serving a sentence of life imprisonment at HM Prison Erlestoke.

8. The applicant was convicted in 1975 for the murder of a policeman and attempted murder of two other policemen arising out of an incident in the early hours of 6 July 1974 when, on being stopped by the police, he had pulled out a pistol and shot all three officers. He was sentenced to mandatory life imprisonment for the murder and to two concurrent terms of fifteen years imprisonment for the attempted murders.

9. After his trial, the trial judge recommended that he serve a tariff (minimum period of detention representing the elements of retribution and deterrence) of 20 years. The Lord Chief Justice agreed. The Secretary of State did not set a tariff.

10. By letter dated 25 July 2000, the applicant was informed that the Secretary of State had given fresh consideration to the tariff in his case. The letter stated that the Secretary of State had decided to set the tariff at 23 years and that, as this period had expired, the tariff was no longer a factor in the applicant's continued detention.

11. By letter dated 27 March 2001, the applicant was informed that the Parole Board had not recommended his release. Though some improvement had been observed, it was noted that the reports on the applicant agreed that he still had some way to go before a move to open conditions could be contemplated. As his progress in a category C prison had been encouraging however, his next review was set to commence on March 2002.

### II. RELEVANT DOMESTIC LAW AND PRACTICE

#### A. Life sentences

12. Murder carries a mandatory sentence of life imprisonment under the Murder (Abolition of Death Penalty) Act 1965. A person convicted of other serious offences (e.g. manslaughter or rape) may also be sentenced to life imprisonment at the discretion of the trial judge in certain other cases where the offence is grave and where there are exceptional circumstances which demonstrate that the offender is a danger to the public and it is not possible to say when that danger will subside.

## **B. Tariffs**

13. Over the years, the Secretary of State has adopted a “tariff” policy in exercising his discretion whether to release offenders sentenced to life imprisonment. This was first publicly announced in Parliament by Mr Leon Brittan on 30 November 1983 (Hansard (House of Commons Debates) cols. 505-507). In essence, the tariff approach involves breaking down the life sentence into component parts, namely retribution, deterrence and protection of the public. The “tariff” represents the minimum period which the prisoner will have to serve to satisfy the requirements of retribution and deterrence. The Secretary of State will not refer the case to the Parole Board until three years before the expiry of the tariff period, and will not exercise his discretion to release on licence until after the tariff period has been completed (per Lord Browne-Wilkinson, *Ex parte V. and T.*, [1998] Appeal Cases 407, at pp. 492G-493A).

14. Pursuant to section 34 of the 1991 Act, the tariff of a discretionary life prisoner is fixed in open court by the trial judge after conviction. After expiry of the tariff, the prisoner may require the Secretary of State to refer his case to the Parole Board which has the power to order release if it is satisfied that it is no longer necessary to detain him for the protection of the public.

15. A different regime, however, applies under the 1991 Act to persons serving a mandatory sentence of life imprisonment. In relation to these prisoners, the Secretary of State decides the length of the tariff. The view of the trial judge is made known to the prisoner after his trial, as is the opinion of the Lord Chief Justice. The prisoner is afforded the opportunity to make representations to the Secretary of State who then proceeds to fix the tariff and is entitled to depart from the judicial view (*R. v. Secretary of State for the Home Department, ex parte Doody* [1994] 1 Appeal Cases 531; and see the Home Secretary, Mr Michael Howard’s, policy statement to Parliament, 27 July 1993, Hansard (House of Commons Debates) cols. 861-864).

## **C. Release on licence of mandatory life sentence prisoners**

16. At the relevant time, the Criminal Justice Act 1991 provided in section 35(2):

“If recommended to do so by the [Parole] Board, the Secretary of State may, after consultation with the Lord Chief Justice together with the trial judge if available, release on licence a life prisoner who is not a discretionary life prisoner.”

17. On 27 July 1993, the Secretary of State made a statement in Parliament explaining his practice in relation to mandatory life prisoners. The statement emphasised that before any mandatory life prisoner is released on life licence, the Secretary of State

“... will consider not only, (a) whether the period served by the prisoner is adequate to satisfy the requirements of retribution and deterrence and, (b) whether it is safe to release the prisoner, but also (c) the public acceptability of early release. This means that I will only exercise my discretion to release if I am satisfied that to do so will not threaten the maintenance of public confidence in the system of criminal justice.”

18. In determining the principles of fairness that apply to the procedures governing the review of mandatory life sentences, the English courts have recognised that the mandatory sentence is, like the discretionary sentence, composed of both a punitive period (“the tariff”) and a security period. As regards the latter, detention is linked to the assessment of the prisoner’s risk to the public following the expiry of the tariff (see e.g. *R. v. Parole Board, ex parte Bradley* (Divisional Court) [1991] 1 WLR 135; *R. v. Parole Board ex parte Wilson* (Court of Appeal) [1992] 2 AER 576).

#### **D. Recent developments**

19. Following the judgment in *Stafford v. the United Kingdom* (no. 46295/99, ECHR 2002-IV), the Secretary of State announced in the House of Commons on 17 October 2002 his decision to introduce interim measures applicable to the review and release of mandatory life sentence prisoners applicable to reviews from 1 January 2003. This allows for prisoners, whose tariff had expired, to apply for an oral hearing at which they may have representation, receive full disclosure of material relevant to the question of release and be able to examine and cross-examine witness.

“If, at the end of the review process, the Parole Board favours the release of a mandatory life sentence prisoner once the minimum period has been served the Home Secretary will normally accept such a recommendation. ...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

20. Article 5 § 4 provides:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

#### **A. Parties’ submissions**

21. The applicant essentially complained about his continued detention following the expiry of his tariff. He relied on the Court’s judgment in

*Stafford v. the United Kingdom* (cited above), and submitted that his case was not reviewed by a body with a power to release or with the necessary safeguards, including, for example, the possibility of an oral hearing.

22. The Government accepted that following the expiry of the applicant's tariff, the lawfulness of his detention was not reviewed by a judicial body which had the power to order his release, as required by Article 5 § 4 of the Convention.

### **B. The Court's assessment**

23. The Court recalls that in *Stafford v. the United Kingdom* (cited above) it found in respect of a mandatory life prisoner sentenced for murder that, after the expiry of the tariff, which was the punishment element of the sentence, continued detention depended on elements of risk and dangerousness that could change with the course of time. Article 5 § 4 therefore required that he should be able periodically to challenge the continuing legality of his detention in an appropriate procedure.

24. In this case, the applicant's tariff under his mandatory life sentence expired in 1998. While the Parole Board reviewed the applicant's case in 2001, it did not have any power to order his release and could only make recommendations to the Secretary of State. Nor did any oral hearing take place, with the opportunity to examine or cross-examine witnesses relevant to any allegations that the applicant remained a risk to the public. The Government did not dispute that the lawfulness of the applicant's continued detention was not reviewed by a body with the power to order release or with a procedure containing the necessary judicial safeguards as required by Article 5 § 4 of the Convention.

25. The Court concludes that there has been in that respect a violation of Article 5 § 4 of the Convention.

## **II. 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. The applicant claimed damages for the entire period of imprisonment since expiry of his tariff which he considered unlawful. He claimed pecuniary damage for the earnings as an electrician that he would

have received if in the community, namely, 52,000 pounds sterling (GBP) per annum. Concerning non-pecuniary damage, he referred to the feelings of anxiety, uncertainty and frustration endured over the years and claimed GBP 15,000, relying on the length of his wait for a proper review which was ten times longer than that suffered by the applicant in *Waite v. the United Kingdom* (no. 53236/99, judgment of 10 December 2002), who was awarded GBP 1,500.

28. The Government submitted that there was no basis for the assertion that the applicant had suffered loss of earnings as a direct result of a violation of the Convention and that he had at all times had been lawfully imprisoned under sentence for murder. In relation to non-pecuniary damage, there was no indication that but for the breach the applicant would have been released as the Parole Board had never recommended release and in their view the finding of a violation would itself constitute just satisfaction.

29. The Court notes that it has found a procedural breach of Article 5 § 4 above and that there has been no finding of substantive unlawfulness. On the facts of this case, there is no apparent direct causal connection between the pecuniary damage claimed by the applicant and the violation found by the Court. It is not possible to speculate as to the applicant's prospects of release if the procedures had conformed with Article 5 § 4. Nonetheless, it considers that the applicant must have suffered feelings of frustration, uncertainty and anxiety from the situation which cannot be compensated solely by the finding of violation. In this respect, while some regard may be had to the length of time over which this situation existed, there can be no mathematical correlation with the period in issue in the *Waite* case, which concerned a different set of circumstances. The Court awards, on an equitable basis, 1,500 euros (EUR).

## **B. Costs and expenses**

30. The applicant claimed a total of GBP 1,030.39, inclusive of VAT, for legal costs and expenses, which included GBP 677.89 for his solicitor, GBP 117.50 for counsel and GBP 235 for anticipated costs.

31. The Government noted that the applicant's schedule of costs did not include a breakdown of dates and items of work done and that in any event most of the submissions had been made by the applicant and that there had been no oral hearing. They queried the anticipated costs item and submitted that a reasonable sum for costs would be GBP 500.

32. Noting the relative lack of complexity of the procedures in this case and the lack of itemisation of certain aspects of the claim, the Court makes an award of EUR 1,000, inclusive of VAT.

### C. Default interest

33. 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 5 § 4 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 the national currency of the respondent State at the rate applicable at the date of settlement, the following amounts:
    - (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
    - (ii) EUR 1,000 (one 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 7 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Matti PELLONPÄÄ  
President