



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

FOURTH SECTION

CASE OF LEWIS v. THE UNITED KINGDOM

(Application no. 1303/02)

JUDGMENT

STRASBOURG

25 November 2003

FINAL

25/02/2004

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 Lewis 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 M. FISCHBACH,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO, *judges*,

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

Having deliberated in private on 8 July and 4 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 1303/02) 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 Peter James Lewis ("the applicant"), on 4 April 2001.

2. The applicant was represented by Ms A. Bromley, a solicitor practising in Nottingham. The United Kingdom Government ("the Government") were represented by their Agent, Mr J. Grainger of the Foreign and Commonwealth Office, London.

3. The applicant invoked Articles 8 and 13 of the Convention in relation to the covert recording by the police of conversations in his cottage.

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 8 July 2003, the Court declared the application partly admissible.

6. Neither party 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 is a United Kingdom national, who was born in 1944 and is currently serving a sentence of imprisonment in HMP Maidstone.

8. The applicant and his wife frequently travelled between various European countries. On 16 April 1997, the Chief Constable of South Wales authorised the installation of covert recording devices at the applicant's cottage and this was carried out on 23 April 1997. Authority for a further 28 days' surveillance was granted on 14 May 1997.

9. Over 160 hours of tapes were obtained between the period of 25 April to 9 June 1997, on which latter date the applicant and his wife were arrested. The transcripts of the taped conversations made up the bulk of the case against the applicant.

10. At trial, the applicant's defence alleged that the recorded discussions, which occurred while he and the others concerned were under the influence of drugs, were “drug-crazed ramblings” and challenged their admissibility. A “*voir dire*” took place from 28 May to 1 June 1998, during which the defence made submissions concerning the procedure for authorisation of the surveillance and seeking *inter alia* to exclude irrelevant or prejudicial material under sections 78 of the Police and Criminal Evidence Act 1984 (PACE). By agreement, the transcript evidence was reduced from five to two files and an agreed schedule was adopted by all counsel concerning the occasions on which the conversations occurred at the same time as drug taking. In summing up to the jury at the conclusion of the trial, the judge directed their attention to the fact that the supposedly incriminating statements taped at the cottage were or may have been the product of the participants' intoxicated state and that it was for them to assess whether despite the drugs the defendants were expressing rational, genuine thoughts, real ideas, plans or arrangements.

11. On 15 June 1998, the applicant was convicted of charges *inter alia* of conspiracy to import controlled drugs and possession of controlled drugs in connection with importation of marijuana and cocaine from overseas. He was sentenced to a total of fifteen years' imprisonment. A confiscation order was imposed on him on 24 September 1998 in the sum of 50,169.18 pounds sterling (GBP).

12. On 10 November 1999, a single judge of the Court of Appeal refused an extension of time to appeal against sentence and refused leave to appeal against conviction, noting that no satisfactory or sufficient reason had been given for the 11 month delay in lodging the application. The applicant's renewed application was refused by the Court of Appeal on 17 October 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Home Office Guidelines

13. At the relevant time, the Home Office Guidelines of 1984 on the use of equipment in police surveillance operations 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.

14. 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 had been tried and failed, or had been, from the nature of things, unlikely to succeed if tried; c) there must have been good reason to think that the 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 and d) the use of equipment was operationally feasible.

B. The Police Act 1997

15. 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.

16. 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

17. 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.”

18. The Government conceded, in the light of *Khan v. the United Kingdom* (no. 35394/97, ECHR 2000-V, §§ 26-28), that the installation of a recording device in the applicant's home by the police amounted to an interference with the applicant's right to private life guaranteed by Article 8 and that these measures were not “in accordance with the law” for the purposes of Article 8 § 2.

19. 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

20. 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.”

21. 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

22. 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.”

23. The applicant failed, without explanation or request for an extension, to submit his claims under Article 41 of the Convention within the time-limit set for that purpose. The Court further notes that the claims submitted more than one month after the expiry of the time-limit were incomplete. In the circumstances, it makes no award under this provision (see *e.g. Boca v. Belgium*, no. 50615/99, 15 November 1999, § 31).

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.

Done in English, and notified in writing on 25 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President