



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

FOURTH SECTION

CASE OF HILL v. THE UNITED KINGDOM

(Application no. 19365/02)

JUDGMENT

STRASBOURG

27 April 2004

FINAL

27/07/2004

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 Hill 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. BORRERO BORRERO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 September 2003 and on 6 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 19365/02) 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 Robert Edward Hill ("the applicant"), on 11 March 2002.

2. The applicant, who had been granted legal aid, was represented by Mr S. Creighton, a solicitor practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Ms E. Willmott of the Foreign and Commonwealth Office, London.

3. The applicant, serving a sentence of mandatory life imprisonment, alleged that the Parole Board did not provide the guarantees and procedures required by Article 5 § 4 when examining whether he should be released and that he had no enforceable right to compensation for any breach of his rights as required by Article 5 § 5.

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 23 September 2003, the Court declared the remainder of application admissible.

6. The applicant filed observations on just satisfaction and the Government replied (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1959 and is serving a sentence of life imprisonment in HM Prison Doncaster.

8. The applicant was convicted in or around 1981 for the murder of an acquaintance. He was sentenced to mandatory life imprisonment, and his tariff (the minimum period of imprisonment required to satisfy the requirements of retribution and deterrence) was set at 12 years.

9. At the time of the applicant's latest Parole Board review in 2001, he was detained in HM Prison Wymott as a "Category C" prisoner (prisoners being given a security category classification ranging from Category A (highest risk) to Category D (suitable for open conditions)). The Parole Board recommended that the applicant should be transferred to open conditions, and that his detention should be reviewed after two years. By letter dated 6 July 2001 the Secretary of State informed the Prison Service that he did not accept the Parole Board's recommendation for transfer to open conditions, and that the next review should begin after 12 months. In the letter to the applicant which accompanied the decision it was stated that:

"... [t]he Secretary of State attaches particular weight to the psychologist's report, it has highlighted in some detail, the need for further exploration of your insight into, and responsibility for, the index offence and the apparent lack of empathy towards the victim."

10. In June 2001 the applicant was transferred to HM Prison Manchester. He claimed that he did not receive notification of the parole decision until sometime after 13 September 2001. The Government stated that a copy of the decision letter was sent to the applicant on 6 July 2001 and a copy to the solicitors then acting for the applicant on 7 August 2001. When the applicant changed his solicitors in September 2001, the authorities sent a copy of the decision to the new solicitors.

11. The applicant stated that he wanted to seek judicial review of the decision, but was unable to find a solicitor who was prepared to act on his behalf. His then solicitors gave advice that judicial review stood little prospect of success as the reports recommending a move to open conditions had been slightly ambiguous, there were a number of very unfavourable reports and the Secretary of State had given extensive reasons for rejecting the recommended move.

12. The applicant's first Parole Board oral hearing under new arrangements was scheduled for November 2003. At the applicant's request, it was deferred until May 2004 to allow the applicant time to complete certain courses identified in the reports for the Parole Board review.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Life sentences and tariffs

13. Murder carries a mandatory sentence of life imprisonment under the Murder (Abolition of Death Penalty) Act 1965. At the time of sentence, a “tariff” is imposed which represents the minimum period that the prisoner will have to serve in order to satisfy the requirements of retribution and deterrence. A life prisoner will not be released on licence until after the tariff period has been completed.

B. Release on licence of mandatory life sentence prisoners

14. 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.”

15. 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 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.”

16. 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 for example, *R. v. Parole Board, ex parte Bradley* (Divisional Court) [1991] 1 WLR135; *R. v. Parole Board ex parte Wilson* (Court of Appeal) [1992] 2 AllER576).

C. Recent developments

17. 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 witnesses.

“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

18. The applicant complains about the review procedure applying to his continued detention, invoking Article 5 § 4 of the Convention which provides:

“4. 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.”

19. The applicant submitted that since his tariff expired he has not had any proper review of his continued detention, as the Parole Board had no power to order his release and none of his reviews involved an oral hearing. His first oral hearing had been scheduled to take place in November 2003, ten years after the expiry of his tariff. As held in *Benjamin and Wilson v. the United Kingdom* (no. 28212/95, judgment of 26 September 2002), it was not sufficient either that the Secretary of State agreed to abide by the Parole Board recommendations.

20. The Government submitted that, insofar as *Stafford v. United Kingdom* (cited above) was relevant to the applicant's complaints, he would enjoy the benefit of the interim arrangements announced by the Secretary of State on 17 October 2002. Further, this case could be distinguished from *Stafford* in which the Parole Board had recommended the applicant's release on life licence, whereas no such recommendation had been made in the present applicant's case.

21. The Court recalls that in *Stafford v. the United Kingdom* (cited above) it found that the continued detention of a mandatory life prisoner sentenced for murder depended, after the expiry of the tariff which was the punishment element of the sentence, 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.

22. In this case, the applicant's tariff under his mandatory life sentence expired in or about 1993. 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. The fact that the Parole Board has never in fact recommended this applicant's release does not deprive him of the right to have a review by a body offering the requisite guarantees.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

24. Article 5 § 5 of the Convention provides:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”

25. The applicant submitted that he had further been denied an enforceable right to compensation as provided by Article 5 § 5 in respect of any breaches of the other provisions of Article 5.

26. The Government made no submissions on the point.

27. The Court has found above a violation of Article 5 § 4 in that the applicant did not receive a review of the lawfulness of his detention in accordance with the requirements of that provision. No possibility of obtaining compensation existed at the relevant time in domestic law in respect of that breach of the Convention. There has, accordingly, been a violation of Article 5 § 5.

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 non-pecuniary loss, submitting that he had experienced particularly intense feelings of distress and frustration

throughout the ten year period since his tariff has expired. As the Secretary of State rejected positive recommendations from the Parole Board, he was led to the conclusion that his prospects of securing release had been substantially damaged by the lack of a procedure to enable a court-like body to determine his release. He also referred to delays between those reviews which did take place. He proposed 4,000 pounds sterling (GBP).

30. The Government denied that there was any causal connection between the alleged breach of Article 5 § 4 and the applicant's detention since expiry of tariff. Any assertion that he would have been released earlier was purely speculative. They noted that he had asked for his latest Parole Board review to be postponed. They submitted that no award was appropriate.

31. 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. 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. Having regard to awards made in similar cases, the Court awards, on an equitable basis, 2,200 euros (EUR).

B. Costs and expenses

32. The applicant claimed GBP 2,568 for legal costs and expenses, plus GBP 449.40 for value added tax (VAT), making a total of GBP 3,017.50. This included 10.70 hours work charged by his solicitor at GBP 240 an hour.

33. The Government considered that the rate of GBP 240 was excessive and that the total sum could be reduced to GBP 1,500. They also pointed out that Council of Europe legal aid should be deducted.

34. The Court considers that the amounts claimed by the applicant are not unreasonable as to hours charged or as to quantum overall. Taking into account the amount of legal aid paid by the Council of Europe, it awards EUR 3,827 for legal costs and expenses, inclusive of VAT.

C. Default interest

35. 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* that there has been a violation of Article 5 § 5 of the Convention;
3. *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, the following amounts:
 - (i) EUR 2,200 (two thousand two hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 3,827 (three thousand eight hundred and twenty seven 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.]

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President