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

FOURTH SECTION

CASE OF LE PETIT v. THE UNITED KINGDOM

(Application no. 35574/97)

JUDGMENT

STRASBOURG

15 June 2004

FINAL

15/09/2004

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 Le Petit 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 J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 May 2004,

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

PROCEDURE

1. The case originated in an application (no. 35574/97) 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 a national of the United Kingdom national, Ian Le Petit ("the applicant"), on 21 March 1997.

2. The applicant was represented by Mr J. Mackenzie, a lawyer practising in Oxfordshire. The United Kingdom Government ("the Government") were represented by successive Agents, Mr Eaton, Mr Whomersley and Mr Grainger, of the Foreign and Commonwealth Office.

3. The applicant mainly complained under Article 6 § 1 of the Convention that his naval court-martial did not constitute a fair hearing by an independent and impartial tribunal.

4. The application was 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. It 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 of the Rules of Court.

6. On 1 November 2000 the Court changed the composition of its Sections (Rule 25 § 1) and the case was assigned to the newly composed Fourth Section (Rule 52 § 1) .

7. By decision dated 5 December 2000, the Court declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1957 and lives in Bristol. In 1974 he joined the Royal Navy. At the relevant time he held a senior non-commissioned rank and was an experienced administrator. On 20 October 1995 he was informed that he was under investigation on suspicion of travel fraud. Since he was to be interviewed by the naval police, he was offered the opportunity to speak to a naval barrister. He accepted this offer, was given legal advice and confirmed that he understood the advice given.

10. He then attended two interviews with the naval police. At the beginning of both interviews he was cautioned (section 76 of the Police and Criminal Evidence Act 1984). He declined the opportunity accorded to him to obtain legal advice and to have a legal adviser present at those interviews. He made certain admissions at his first interview and gave the investigators access to his bank accounts. On 27 November 1995 he was interviewed for a second time and then charged.

11. The charge sheet, as approved by the convening authority listed six charges (pursuant to section 42 of the Naval Discipline Act 1957) of obtaining property and a service by deception contrary to sections 1 and 15 of the Theft Act 1968. All charges related to the making of false representations about travel allowances.

12. By notice dated 3 July 1996 the convening authority ordered the convening of a court-martial to try the applicant on the charges. He appointed the members of the court-martial by name. All were subordinate to the convening authority but none served within his chain of command. The Judge Advocate was appointed by the Chief Naval Judge Advocate. While the Judge Advocate was subordinate in rank to the President and both served under the Second Sea Lord, there was no command or other substantive institutional link between them.

13. The court-martial took place on 8-10 July 1996. Once the applicant's preliminary objections were rejected (he contested the admission of evidence from his interviews and he alleges that he challenged the composition of the court-martial), he pleaded guilty as charged. On 10 July 1996 he was sentenced to three months' imprisonment.

14. By letter dated 14 January 1997, his legal representative was informed of the decision taken by the Admiralty Board to reject his petition against conviction and sentence. It was considered that his admissions in

interview were not the result of oppression and that, given the seriousness of the offences, his sentence was neither manifestly excessive nor wrong in principle.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The law and procedures of naval courts-martial were contained in the Naval Discipline Act 1957 ("the 1957 Act") and in certain statutory instruments made under the 1957 Act including the Naval Courts-Martial General Orders (Royal Navy) 1991 ("the 1991 Orders"). These are outlined in the *G.W. v. the United Kingdom* judgment (no. 34155/96, §§ 15-36), delivered on even date herewith.

16. Following the Commission's report in the case of *Findlay v. the United Kingdom*, certain provisions of the 1957 Act were amended by the Armed Forces Act 1996 ("the 1996 Act") which Act came into force on 1 April 1997 (*Findlay v. the United Kingdom*, no. 22107/93, Commission's report of 5 September 1995 and, see also, judgment in that case of 25 February 1997, *Reports of Judgments and Decisions* 1997-I). The new naval court-martial system for which the 1996 Act provides is described in the Court's judgment in the case of *Grieves v. the United Kingdom* ([GC], no. 57067/00, §§ 16-62, ECHR 2003-XII).

THE LAW

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

17. The applicant complained under this provision that he did not have a fair hearing by an independent and impartial tribunal established by law. He submitted that his court-martial was neither independent nor impartial because of the conflicting roles of the convening authority and, notably, the latter's institutional connection with the prosecution and with the members of the court-martial.

He also complained under Article 6 § 1 that he did not have a fair hearing for other reasons mainly concerning the independence of, and advice given by, his advising naval barrister and the admission in evidence of statements made by him during interview. He further complained that the court-martial was not "established by law" since an administrative body (the Admiralty Board) could quash his conviction and sentence.

18. Article 6 § 1 of the Convention, insofar as relevant, reads as follows:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ..."

19. The Government pointed out, *inter alia*, that the present court-martial did not have the same deficiencies found to be in violation of Article 6 § 1 in the above-cited *Findlay* judgment because, after the adoption of the Commission's Report in the *Findlay* case (on 5 September 1995), the Royal Navy ensured that the members of its courts-martial (including the present one) were not in the convening authority's chain of command. The applicant could have, but did not, challenge the composition of his court-martial. In addition, the "confirming stage" of a court-martial, criticised in the *Findlay* judgment, did not exist in the naval system. Moreover, a finding of guilty was reviewed by a Reviewing Authority which was independent of the court-martial process: while the Court in its *Findlay* judgment expressed concerns about the post-trial procedure, that procedure did not affect the independence and impartiality of the court-martial which tried the applicant.

The Government also took issue with the applicant's additional fairness submissions.

20. The Court considers that Article 6 § 1 is clearly applicable to the court-martial proceedings since they involved the determination of the applicant's sentence following his plea of guilty to criminal charges. In this latter respect, it is noted that the applicant was charged with six counts of obtaining property and a service by deception under the Theft Act 1968 and was sentenced to three months' imprisonment (*Engel and Others v. the Netherlands* judgment of 8 June 1976, Series A no. 22, §§ 82-83, the above-cited *Findlay* judgment, at § 69, *Ezeh and Connors v. the United Kingdom* [GC], Nos. 39665/98 and 40086/98, §§ 69-130, ECHR-… and *Cooper v. the United Kingdom* [GC], no. 48843/99, § 80, ECHR 2003-XII).

21. As to the merits of the applicant's complaint, the Court has had regard to the outline of the relevant case-law on the independence and impartiality of naval courts-martial in its judgment in the case of *G.W. v. the United Kingdom*, delivered on the same date as the present judgment. It has noted the parties' submissions and the conclusion in that case to the effect that *G.W.'s* naval court-martial did not fulfil the independence, impartiality or, consequently, the fairness requirements of Article 6 § 1 of the Convention mainly because of the conflicting roles of the convening officer.

22. The Court finds no factual or legal grounds upon which to distinguish the present case from the above-described *G.W.* application as regards the powers and position of the convening officer. It concludes, for the reasons detailed in the *G.W.* judgment, that the court-martial convened under the 1957 Act to try the present applicant did not fulfil the requirements of independence, impartiality or, consequently, fairness of Article 6 § 1 of the Convention.

23. This conclusion renders it unnecessary to address the applicant's additional submissions concerning the fairness of his court-martial proceedings (paragraph 17 above). In addition, given the Court's findings at

paragraph 48 of the *G.W.* judgment concerning the post-trial reviewing authority, it is not necessary also to examine the applicant's additional complaint that the court-martial had not been "established by law" within the meaning of Article 6 § 1 of the Convention.

24. In sum there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed, without further detail or submission, 5000 pounds sterling ("GBP") in compensation for the non-pecuniary loss suffered. The Government argued that there were no grounds for believing that the applicant would not have suffered the same or similar consequences if the court-martial had been organised to comply with Article 6 § 1 and they submitted that no causal link had been established between the Convention breach alleged and the losses claimed (*Wilkinson and Allen v. the United Kingdom*, nos. 31145/96 and 35580/97, § 33, 6 February 2001).

27. The Court recalls that in the above-cited *Findlay* judgment no award of compensation for any non-pecuniary damage suffered was made because it was considered impossible to speculate as to the outcome of the court-martial proceedings had the violation of the Convention not occurred (at §§ 85 and 88). The Court also refers to more recent applications of this principle in court-martial cases (the above-cited *Wilkinson and Allen* case, § 33, *Coyne v. the United Kingdom* judgment of 24 September 1997, *Reports* 1997-V, § 62 and *Cable and Others v. the United Kingdom* [GC], nos. 24436/94 et seq. § 26, 18 February 1999).

28. Accordingly, and as in the above-cited *G.W.* case, the Court considers that the finding of a violation in itself affords the applicant sufficient reparation for any non-pecuniary damage suffered by him.

B. Costs and expenses

29. The applicant also claimed GBP 1500 in legal costs and expenses, although he did not specify whether the sum claimed was inclusive of value

added-tax ("VAT"). The Government considered this claim to be reasonable provided it was inclusive of VAT.

30. The Court recalls that, according to the criteria laid down in its case-law, it must ascertain whether the sum claimed in costs and expenses was actually and necessarily incurred and was reasonable as to quantum (*Witold Litwa v. Poland*, no. 26629/95, § 88, ECHR 2000-III).

31. The applicant did not submit any document vouching his legal costs or, indeed, any detail of those claims and he did not specify whether the amount claimed was inclusive of VAT or not. In addition, it is not considered that the case was a particularly complex one given the adoption of the *Findlay* judgment and its application by the Commission prior to the admissibility of the present case (*Lane v. the United Kingdom* no. 27347/95 and *B.E.V. v. the United Kingdom*, no. 29717/96, Commission's reports of 21 October 1998, both unpublished). However, it is clear that some legal work was necessarily and reasonably undertaken on the applicant's behalf and it is also noted that the costs were calculated as early as January 2001 following which certain work was required by the Court on the case and, in particular, on observations requested by the Court following the adoption of the above-cited *Grieves* judgment.

32. Making its assessment on an equitable basis, the Court considers it reasonable to award the applicant 2100 euros (EUR) (inclusive of VAT) for his costs and expenses, to be converted into pounds sterling on the date of settlement.

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 6 § 1 of the Convention;

2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

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, EUR 2100 (two thousand one hundred euros) inclusive of VAT in respect of costs and expenses, to be

converted into pounds sterling at the rate applicable on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 15 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President