



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

FOURTH SECTION

CASE OF KING v. THE UNITED KINGDOM

(Application no. 13881/02)

JUDGMENT

STRASBOURG

16 November 2004

FINAL

16/02/2005

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 King 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 17 February and 26 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 515/02) 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, James Murray King ("the applicant"), on 24 March 2002.

2. The applicant was represented by Salim and Patel, solicitors 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 alleged that the taxation penalty proceedings brought against him exceeded a reasonable length of time.

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 April 2003, the Court declared part of the application inadmissible and invited the respondent Government to submit observations on the remaining complaints. On 17 February 2004, the Court declared the remainder of the application partly admissible.

6. The parties 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 facts of the case, as submitted by the parties, may be summarised as follows.

8. The applicant was born in New Zealand and at all material times was domiciled there. In 1966 he came to the United Kingdom to attend flying courses and at the same time engaged in other occupations of an engineering or building contractor variety, trading under the name “King Enterprises Engineering & Hardware Co”. The applicant met Miss J. and between April 1973 and October 1991 they purchased properties together.

9. From the 1970s onwards, the applicant's tax returns were incomplete and late, in some cases by several years. From February 1982, the Inland Revenue began investigating a number of guesthouse businesses in London which were associated with the applicant and/or his partner Miss J. of which no mention had been made in the applicant's tax returns.

10. In December 1985 the General Commissioners of taxes served two notices on the applicant requiring him to provide details of the acquisition of one of the guesthouses and to produce his business records. At a meeting on 21 November 1986, the applicant states that he was informed that the Revenue would be seeking penalties as part of any settlement.

11. From this time the applicant was involved in frequent discussions and correspondence with the Revenue about his affairs. The Government stated that the Revenue held some 38 meetings with the applicant and/or his accountant between September 1986 and July 1991.

12. In June 1987 the Revenue requested a statement of assets and liabilities from the applicant. The applicant states that he objected to disclosing all his assets since due to his non-domicile status his overseas assets were of no relevance. When he had not provided the statement by November 1987, the applicant was interviewed by the Inspector of taxes and on 21 November 1987 the “Hansard statement” was read to him. The statement, revised by the Chancellor of the Exchequer from time to time, sets out the practice of the Inland Revenue in cases in which criminal proceedings may be contemplated and outlines the factors taken into account by the Revenue when deciding whether to prosecute.

13. In April 1988 the General Commissioners served a notice requiring the applicant to give details of all transfers of property and cash and of his bank accounts. The notices included a warning about the financial penalty which could be imposed for non-compliance.

14. On 18 January 1989 the applicant signed a “Statement of Personal Assets and Liabilities and Business Interests” as at 1 September 1986. He states that this was after the Special Commissioners had refused to require

him to disclose his overseas assets. The same month, the Revenue issued tax assessments against the applicant for the tax years 1972/3 to 1986/7. The assessments were for income tax on guesthouse profits and bank interest which had not been declared by the applicant in his tax returns. The total claimed was in excess of 620,000 pounds sterling (GBP). For the tax years more than six years prior to the assessments being made, the Revenue could only raise assessments which were to make good a loss of tax due to the neglect or wilful default of the applicant.

1. The 1991 appeal

15. The applicant appealed against the assessments. Initial hearings during early 1989 before the General Commissioners were adjourned on the application of the applicant or Miss J. On 24 August 1989, at the Revenue's application, the appeals were transferred to the Special Commissioners of Taxes. A hearing of one week was scheduled for November 1990. On the date set for the hearing of his appeal, the applicant applied for judicial review of the refusal of the Special Commissioners to hold a preliminary hearing at his request. The appeal was adjourned as a result. After the refusal of permission to apply for judicial review, the appeals were relisted.

16. The appeals were heard over eighteen days between May and September 1991. The Commissioners initially indicated that they were not prepared to sit one day a week for the convenience of the applicant, but after the Revenue had opened the case it was decided that, exceptionally, the hearings should be arranged to ensure that the applicant and Miss J. were able to attend. The applicant's main submissions were that he had no beneficial interest in three of the guesthouses in respect of which assessments had been made and that certain funds used to purchase property had been a loan from his father.

17. On 18 November 1991 the Special Commissioners issued their written decision. Some of the assessments were reduced to nil or discharged, but the appeals were dismissed in substance, the Commissioners finding that (for those years for which it was necessary) the purpose of the assessments had been to make good a loss of tax which was due to the applicant's wilful default or neglect. They found that the applicant had traded as a guesthouse proprietor and had derived profits from the trade. The applicant's evidence was described as "irregular in quality" and his claim that he was in partnership with other members of the family, including his infant children was found to be "a complete sham". The revised assessments amounted to approximately GBP 120,000.

18. In or about the end of December 1991 the applicant applied for the Special Commissioners to state a case by way of appeal to the High Court against the 1991 Commissioners' decision, on the basis that they had erred in law, there being no evidence on which they could reach their determinations. The Special Commissioners drafted the case for the High

Court in July 1992 and the applicant lodged his appeal on 17 August 1992. The appeal was heard and dismissed on 26 November 1993. The Court of Appeal dismissed the applicant's further appeal in October 1995.

2. Imposition of interest and penalty determinations

19. Meanwhile, in December 1991 the General Commissioners issued a determination under section 88 of the Taxes Management Act 1970 that interest was payable on the assessments from specified dates on which the tax ought to have been paid, to the date of payment. The applicant appealed against the determination.

20. On 17 October 1994 the Revenue issued penalty determinations, assessed at 80% of the tax lost (the maximum penalty then being 100% of the lost tax, plus GBP 50). The penalties amounted to over GBP 50,000. The applicant appealed against the penalty determinations.

21. In April 1995 the General Commissioners agreed that the interest and penalty appeals should be transferred to the Special Commissioners. At about the same time, the Revenue discovered the existence of a further property, Roundwood Lodge, which had been purchased in 1983 and which was in the applicant's name. The Revenue took the view that the property had been purchased with funds from the profits of the applicant's business and the funds were therefore taxable. In April 1996 further assessments to income tax were therefore issued on guesthouse profits for the years from 1977/78 to 1985/86. The applicant appealed against the further assessments and the matter was later transferred to the Special Commissioners to be consolidated with other appeals.

22. Meanwhile, on March 1996 the applicant suffered a stroke which he states affected his memory and his ability to cope with pressure. In August 1996 he wrote to the Revenue to ask that the "matters in hand" be adjourned to enable him to concentrate on his recovery. He appeared before the General Commissioners on 24 October 1996 when his request for further time for preparation of various matters was granted.

23. Meanwhile, despite reminders from the Inland Revenue on 6 June 1996 and 14 November 1996, the clerk to the General Commissioners did not write to the clerk of the Special Commissioners requesting a transfer until 3 March 1997. Despite further reminders in March, April and May 1997, he failed also to request a transfer of appeals against further assessments made in April 1996. The General Commissioners asked the clerk to request a transfer of these appeals on 24 October 1996.

24. On 6 March 1997 the Special Commissioners agreed to accept jurisdiction and issued requests for information about the status of various appeals. In September 1997 the appeals were consolidated.

3. *The 2000 appeal*

25. In February 1998 there was a preliminary hearing of the appeals against, (i) the December 1991 determination of interest, (ii) the 1994 penalty determination and (iii) the further assessments raised in 1996. The substantive hearing began in May 1998 and was heard over seventeen days between then and April 1999. The applicant represented himself. During the hearing he applied for a copy of the notes made by the 1991 Commissioners. When the application was refused he sought permission to judicially review the decision, which was also refused.

26. On 23 March 2000 the Special Commissioners dismissed the appeals. They held, *inter alia*, that they were bound by the factual findings of the 1991 Commissioners on the issue of neglect/wilful default for the years in respect of which such findings had been required. For the later years, in respect of which no determinations had been made by the 1991 Commissioners, they found wilful default and neglect on the part of the applicant (which was necessary to uphold the penalty determination). They also found that the capital statement he had prepared in 1991 was not truthful. As the amount of tax due was correctly determined by the 1991 Commissioners, the interest determination was also correct. The 80% penalties were appropriate. They allowed his appeal against the further (1996) assessments in part, by allowing some reduction in the amount claimed, but found that the applicant had been the owner of Roundwood Lodge and had purchased it with his own funds.

4. *Appeal to High Court and Court of Appeal*

27. In May 2001 Mr Justice Jacob dismissed the appeals against the findings of the 2000 Commissioners. As regarded the applicant's complaints raised about the procedures under Article 6, he found that the system of imposition of penalties for fraudulent or negligent delivery of incorrect returns or statements was "criminal" for the purposes of the Convention. He noted that the system was plainly punitive and deterrent, and the potential fine was very substantial and dependent on the culpability of the taxpayer, rather than being an administrative matter. The amount of the fine imposed also depended on the degree of culpability as mitigation, essentially a criminal matter, was more where the taxpayer was less culpable. The judge agreed with the applicant that the proceedings began in 1987 when the Hansard warning was given and considered whether the length of the proceedings was unreasonable. The judge noted that the applicant made no complaint of delay up to the 1991 decision and that some of the subsequent delay had been caused by or contributed to by the applicant, *inter alia*, in the way in which 16 hearing days were spread over nearly a year and due to problems arising from his illness. However, he observed that nothing happened for a two year period when the case was referred to the Special

Commissioners, notwithstanding reminders from the Inland Revenue. In conclusion the judge said:

“The decision of the 1991 Commissioners was released on 18 November 1991. Mr King waited some 5 weeks before asking for a case stated (appeal by way of cases stated was the procedure then). There was then an 8 month delay before that was produced (delay not of Mr King's making). The appeal was launched on 17 August 1992. Judgment was given on 14 January 1994. The Revenue delayed making a penalty determination until 17 October 1994. Whilst it is understandable, and at least not unreasonable, for the Revenue to wait until the hearing of the first appeal, it makes no sense for them to have waited some 9 months thereafter. The possibility of a determination was simply left hanging. Meanwhile the parties' attention was focused on other things, namely Mr King's further appeal to the Court of Appeal and, more significantly so far as Mr King's contribution to delay was concerned, the Revenue's discovery of the purchase in 1983 by Mr King of the substantial property, Roundwood Lodge. This led to further assessments and appeals therefrom which, it was decided fairly early on, should be heard with the interest and penalty appeals. ...

It seems that but for Mr King's concealment of Roundwood Lodge, the two other appeals would have been heard earlier than 1998. It is not possible to be precise as to how much delay was caused by the introduction of this factor into the case, but it is far from insignificant. Naturally it prolonged the hearing itself, but on top of that I think a fair estimate of its effect is that it delayed the penalty and interest appeals for about three years.

... The result of all this is that there was delay through no fault of Mr King of, say, five years from the date of the 1991 decision. Is that too much? Marginally, but only just, I think not. He was not thereby prejudiced. ... He merely had to pay the penalty later. But for the complication of Roundwood Lodge, however, I think the time to determination of the penalty appeals would have been inconsistent with Article 6 (1). In future cases it is highly desirable that such appeals (and penalty determinations) are put on a fast track. So far as I can see they were treated in the same way as other determinations and appeals, but it should be appreciated that more is at stake in the case of penalties. Serious consideration should be given to penalty determination being made earlier - in appropriate cases along with the assessments giving rise to the penalties. ... I see no reason why the 1991 Commissioners could not have dealt with a penalty determination appeal if such a determination had been made at the same time as the 1989 determinations or shortly thereafter.”

28. The judge found in addition that the case was a serious one in which penalties were appropriate and the figure of 80% was not too high. So far as the further assessments were concerned, the reasoning of the Commissioners was detailed and convincing. The applicant had given misleading information to the Revenue and to the 1991 Commissioners and the further assessments had been to make good a loss of tax attributable to the applicant's wilful default or neglect. There was no error of law and no reason to overturn the decision.

29. The applicant applied for permission to appeal to the Court of Appeal. Permission was refused on paper in July 2001 and at a hearing on 3 October 2001.

30. On the question of delay, the Court of Appeal said,

“The delays which occurred in relation to the penalty determination must be seen in the context of what has plainly been an extended campaign by the applicant in disputing his liabilities to the Revenue and in deferring the date on which those liabilities have to be satisfied. Moreover, I find ... the greatest difficulty in seeing how the applicant could be prejudiced simply by the fact that the penalty might have been imposed earlier.”

31. The court was not persuaded that an appeal on that basis would have any prospect of success. Although by the time of the appeal a medical report had been provided to the effect that the applicant's memory had been significantly impaired as a result of his stroke, the author was unable to date the onset of the memory loss or its duration. The report did not take the applicant's case as to prejudice any further.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant complains of the length of the tax penalty proceedings. Article 6 § 1 provides in so far as relevant:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

A. Period to be taken into consideration

33. Taking the Hansard warning date of 21 November 1987 as the commencement of the relevant period (see the decision on admissibility of 17 February 2004), the final decision was that of the Court of Appeal of 3 October 2001. The total period is accordingly 13 years, 10 months and 12 days.

B. The parties' submissions

34. The applicant submitted that the total period was unreasonable and a large portion of the delays was attributable to the United Kingdom authorities. He contended that some delays were caused by the Inland Revenue's insistence on his producing details of his worldwide assets in which they had no legitimate interest. There was no reason why the penalty determinations could not have been made at the same time as the assessments so that all the issues could have been heard and resolved at the

same time. He accepted that he had no realistic prospect of success on his appeal to the High Court from the 1991 Special Commissioners' decision but it took almost 11 months for the Revenue to issue the penalty determinations. The Special Commissioners had also taken an unduly long time to produce the stated case and, after the agreement on 17 April 1995 to transfer the case from the General Commissioners to the Special Commissioners, there was an inexplicable failure on the part of the clerk to take the necessary steps until 6 March 1997.

35. The applicant submitted that he has no major complaints about the manner in which the appeals were conducted after the transfer to the Special Commissioners, acknowledging that some delay was caused by his ill-health although pointing out that if matters had proceeded more quickly they would have concluded before his stroke occurred. To the extent that the Government criticised him for appealing against all the tax interest and penalty assessments made, he considered that since he disputed these liabilities he acted entirely reasonably in doing so.

36. The Government submitted that the length of the proceedings was substantially a result of the applicant's strategy to defer the determination of his tax liability as long as possible. He took all available means to prolong matters and deliberately obstructed the proceedings by his refusal to give a truthful account of his assets, his continued denial of interest in various properties and his "near-preposterous" explanations. His affairs were interlocked with those of Miss J. which meant that their appeals had to be heard together. In particular, he concealed the property known as Roundwood Lodge which only came to light in 1995, although purchased in 1983, and which led to the issue of further assessments and resulted in an estimated delay of three years in the overall proceedings. He has provided no explanation for this conduct. Nor did he ever take steps to end the delays which he attributed to the authorities. He gained significant financial benefits in respect of the value of interest lost on monies unpaid and the drop in real value of the penalties imposed.

37. The Government further pointed out that the applicant appealed against every decision, applied for judicial review and greatly slowed down the hearing of the appeals, by his requirement of only one hearing day per month or due to his illness. The case was also extremely complicated, though primarily due to the conduct of the applicant. While there were short periods of delay for which the authorities were responsible, these were minor. The timing of the penalty notices was due to the lack of certainty about the true ownership of the guesthouse businesses and it was reasonable to wait for these issues to be settled by the courts. The gap of eleven months between the High Court and issue of the notices was explicable by the need to obtain approval and to review thirteen files with a view to ensuring consistency of mitigation.

C. The Court's assessment

38. 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, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

39. As regards the importance of what was at stake for the applicant, considerable sums of money were in issue and the applicant faced the imposition of very large penalty assessments. The Court would note however, that, as pointed out by the Government, the delay in the proceedings was not without beneficial effect on the real value of the applicant's eventual liabilities. The domestic courts in that context noted that the applicant had not suffered any prejudice.

40. The proceedings were undoubtedly complex. The Court accepts that the Government's argument that the applicant contributed to their difficulty due to his failure to disclose properties and assets, in particular the Roundwood property, and by a number of unmeritorious appeals. It also notes that the applicant accepted that he did not have much to complain about after the transfer to the Special Commissioners in March 1997 when his own illness affected progress.

41. That said however, prior to 1997, it appears that there were several periods for which the authorities bore responsibility, and which were the subject of criticism in the High Court, namely;

- a delay of some eight months in the Special Commissioners producing the case stated for appeal in 1992;
- a gap of nine months between the rejection in January 1994 of the applicant's appeal by case stated from the 1991 decision on assessments and the Revenue's issuing of the penalty determinations on those assessments on 17 October 1994;
- a completely unexplained delay, due apparently to an oversight on the part of the General Commissioners' clerk, in transferring the appeals against the penalty determinations from the decision to transfer in April 1995 and the actual transfer in March 1997.

42. Notwithstanding therefore what the domestic courts found was deliberate time-wasting by the applicant, the Court cannot but conclude that the authorities themselves contributed, without reasonable justification to the length of the proceedings, which on any analysis took an excessive length of time. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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. Pecuniary damage

44. The applicant claimed 27,770 pounds sterling (GBP) on account of the penalties imposed upon him. He submitted that by the time penalties were imposed on him in 2000 he was already suffering from the effects of a stroke. It was ill-health which accounted for the confusion and inconsistencies in his evidence and led to the imposition of an 80% penalty to reflect his alleged lack of cooperation. He therefore claimed a reduction in the penalties imposed to the level of 40%.

45. The Government considered that the claimed discount should be rejected as, firstly, the applicant had not paid any of the penalties, secondly this would interfere with the sentence imposed by the courts, thirdly, the effect of his tactics in drawing out the proceedings had substantially reduced the real value of the assessments and penalties at issue to the effective level of some 52% in any event, and fourthly, there was no causal link between the penalties and the delay.

46. The Court finds no clear causal connection has been shown between the claimed pecuniary damage and the violation of the Convention (see *e.g. Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, judgment of 29 July 2003, § 32) and makes no award under this head.

B. Non-pecuniary damage

47. The applicant claimed 10,000 euros (EUR) for non-pecuniary damages on account of the additional strain of having to conduct proceedings in circumstances where his health had deteriorated.

48. The Government submitted that the cause of any harm was the applicant's own deliberate actions in drawing out the proceedings.

49. In the present case, the Court has noted above that the applicant's conduct contributed significantly to drawing out and complicating the proceedings. The Government's submissions as to the deliberate nature of the delaying tactics are supported by the domestic courts which found that he had intended to postpone as long as possible the date when he would have to satisfy his tax liabilities. In these circumstances, making an assessment on an equitable basis, the Court considers that a finding of a violation is sufficient just satisfaction.

C. Costs and expenses

50. The applicant claimed GBP 9,995 costs for the proceedings before this Court, consisting of GBP 2,000 for solicitors' costs, GBP 470 for a medical report and GBP 5,925 for counsel, including fees of GBP 3,750 for observations on admissibility and merits. The applicant also claimed GBP 41,920 for costs incurred in the domestic proceedings in disputing the penalties. He argued that one of the main issues in dispute before the High Court was whether there had been undue delay, including whether the proceedings were criminal for the purposes of Article 6. This was also in issue in his application to the Court of Appeal. For the High Court, he claimed his own costs of GBP 16,220, plus GBP 20,000 costs which he was ordered to pay the Inland Revenue; for the Court of Appeal, he claimed GBP 5,700.

51. The Government submitted that these claims were excessive. They considered that for the Strasbourg costs the solicitors' claims were insufficiently broken down, that the medical report had been irrelevant to the issues and that the claims for counsel were unspecific as regards the hours worked. They considered that no more than GBP 5,200 was appropriate. As regarded domestic costs, they saw no justification for his recouping the order of costs paid to the Inland Revenue as it had not been shown that the penalties were wrongly imposed and they argued that the proceedings also concerned the complex factual situation and matters of domestic tax law, pointing out that of the 106 paragraphs of the High Court judgment only 42 referred to Convention issues. Similarly, only one in six of the grounds of appeal concerned Article 6. They also submitted that counsels' fees were excessively high and unspecific as to the hours worked and that the solicitors' fees were based on an unduly high hourly rate and undetailed invoices. They submitted that only GBP 3,284 was appropriate for the High Court and GBP 570 for the Court of Appeal.

52. The Court recalls that amounts claimed for legal costs must be necessarily incurred and reasonable as to quantum (see, amongst other authorities, *Nikolova v. Bulgaria* [GC] no. 31195/96, § 79, ECHR 1999-II). It finds the sums claimed by the applicant for the proceedings in Strasbourg excessively high, given the lack of complexity of the procedure and the limited number of issues. As regards the domestic procedures, these were not concerned exclusively with seeking redress for the alleged violation of the Convention. Nor does it consider that the requirement to pay the Inland Revenue's costs wholly flowed from the applicant's efforts to vindicate his Article 6 rights; the order for costs was largely a consequence of the court's findings as to his liability to pay the penalties in question, although some of the costs may be regarded as also concerning the Convention part of the case.

53. In conclusion, the Court awards EUR 7,300 in respect of the Strasbourg proceedings and EUR 10,200 for the domestic proceedings, together with any value-added tax (VAT) that may be payable.

D. Default interest

54. 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* that
 - (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 17,500 (seventeen thousand five hundred euros) in respect of costs and expenses to be converted into pounds sterling at the date of settlement, together with any VAT that may be chargeable;
 - (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 16 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President