



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

FOURTH SECTION

CASE OF MASSEY v. THE UNITED KINGDOM

(Application no. 14399/02)

JUDGMENT

*(This version has been rectified under Rule 81 of the Rules of Court
on 29 April 2005)*

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 Massey 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,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mrs E. FURA-SANDSTRÖM, *judges*,

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

Having deliberated in private on 6 January 2004 and on 26 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 14399/02) 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 Rupert John Massey ("the applicant"), on 25 March 2002.

2. The United Kingdom Government ("the Government") were represented by their Agent, Mr Derek Walton of the Foreign and Commonwealth Office, London.

3. The applicant alleges that the criminal proceedings brought against him exceeded a reasonable time, invoking Article 6 § 1 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. On 8 April 2003, the Chamber invited the respondent Government to make observations on the applicant's complaints about the length of proceedings and declared the remainder of the application inadmissible.

6. By a decision of 6 January 2004, the Court declared the remainder of the application admissible.

7. The applicant and the Government each 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

8. The applicant was born in November 1945 and is resident in Richmond-upon-Thames, Surrey.

9. In August 1995, the police received a telephone call from GL alleging that the applicant had sexually abused him from December 1981 until December 1983. On 18 September 1995, GL informed the police that he had decided not to make a statement of complaint but on 29 January 1996 stated that he now wished to pursue the matter. On 2 February 1996, the police told GL that there would be a long delay in taking his statement due to other more pressing commitments. On 26 September 1996, the police started to take GL's statement, a process which continued on 18 and 19 December 1996 and several dates at the beginning of January 1997.

10. On 22 April 1996, DM telephoned the police and stated that he too had been sexually abused by the applicant from April 1973 until April 1978. DM informed the police that GL had contacted him and asked if he knew anyone else who had been sexually abused by the applicant and DM had answered that he had been. The police told DM that there would be a long delay before his statement could be taken. The police contacted DM again on 25 January 1997. His statement was taken over several days and completed on 4 February 1997. At a police interview on 25 January 1997, DM stated that he believed that the applicant had abused four other people including his brother, AM.

11. On 20 March 1997, the applicant was arrested on suspicion of indecent assaults on GL and DM. He was interviewed by the police on 21 March 1997 and was subsequently released on police bail.

12. On 4 June 1997, AM made a statement asserting that he had been abused by the applicant from November 1971 until November 1972.

13. On 2 July 1997, the police interviewed the applicant regarding the allegations made by AM. In October 1997, the police fingerprinted and took DNA swabs from the applicant. On 5 December 1997, the applicant was interviewed with respect to allegations of indecent assault made by a fourth person, MC, and was then charged with a number of counts of indecent assault. On 7 January 1998, MC withdrew his complaint.

14. From January to March 1998, the applicant made three remand appearances at the Magistrates' court. He requested a full committal hearing with consideration of the evidence. Shortly before the date set for the committal, it appeared that AM had left to work abroad. On 18 and 19 May 1998, the Magistrates' court refused the applicant's applications to discontinue the proceedings on the grounds of delay and adjourned the committal to allow AM, who was working abroad, to return and give evidence.

15. On 4 September 1998, the applicant was committed for trial on 20 counts relating to three different victims. On 18 December 1998, the trial

was fixed for 14 April 1999. However, on 30 March 1999, the trial was delayed because the applicant was suffering from depression and memory loss. The applicant stated that the judge ordered a date to be fixed for trial from 1 June 1999 as he was responding well to medication and was fit to continue. In June 1999, the Crown Court refused the applicant's applications to stay the proceedings as an abuse of process or to sever the proceedings so that the applicant would be tried separately in respect of each complainant.

16. At the beginning of the trial, on 22 November 1999, the trial judge refused another application by the applicant for the proceedings to be stayed as an abuse of process. The applicant had argued that the trial judge should grant a stay on the grounds that the delay in the complainants coming forward prejudiced his defence since it was not possible to investigate the allegations or approach now deceased witnesses, and that the delay in the conduct of the police investigation allowed the contamination of evidence by contact between GL and DM. The judge considered that the delay in the complainants coming forward did not justify a stay of proceedings. He further deemed that, although the police delay in taking statements was “quite inadequate”, the applicant had not shown that any improper or negligent act or omission of the police had permitted contact between GL and DM or that anything had occurred which contaminated their evidence. The judge considered that the prosecution had discharged any onus upon them to establish that a fair trial was possible.

17. On 7 December 1999, the applicant was convicted of 16 counts of indecent assault and acquitted of four counts of buggery. He was sentenced to a total of six years' imprisonment and was made subject to the registration requirements of the Sex Offenders Act 1997 for an indefinite period.

18. On 29 December 1999, the applicant sought leave to appeal against conviction and sentence on various grounds including that the trial judge should have stayed the proceedings as an abuse of process. On 5 February 2000, the applicant's counsel requested an extension of time to perfect the grounds of appeal. This was granted. On 3 April 2000, a single judge of the Court of Appeal refused to grant leave to appeal against conviction, finding *inter alia* that the trial judge was entitled to conclude that the proceedings did not constitute an abuse of process. The single judge also refused leave to appeal against sentence.

19. On 19 April 2000, the applicant renewed his application. On 12 December 2000, the full Court of Appeal granted leave to appeal against conviction, *inter alia*, on the ground that the trial judge should have granted the applications to stay the proceedings as an abuse of process.

20. In February 2001, the applicant's leading counsel advised that the case involved “complicated and novel arguments” and applied for an extension of legal aid to junior counsel. This was granted. In March 2001, counsel lodged the applicant's skeleton argument and at the end of the month the case was ready for listing. In May 2001, the case was stayed

pending the judgment of the Court of Appeal in an Attorney-General reference case which also concerned issues of delay and abuse.

21. On 20 December 2001, the Court of Appeal refused a renewed application for leave to appeal against sentence and dismissed the appeal against conviction. As regarded the applicant's complaints of delay in the police investigation, which was alleged to have allowed the contamination of the evidence of GL and DM and created the risk of collusion between all three complainants, the Court of Appeal concluded that a stay of proceedings on the grounds of delay could only be granted in exceptional circumstances and only if the defendant showed that a fair trial was impossible. The court considered that Article 6 of the Convention was inapplicable because the applicant had been convicted before the Human Rights Act 1998 came into force but added that, even if Article 6 applied, it would not affect their assessment on the facts. It considered that, on the limited documentary material before him, the judge could not have come to any other conclusion than that a fair trial was possible. The court further deemed that there was no basis to conclude that the judge was wrong to refuse the application for a stay made at the end of the prosecution case:

“Unsatisfactory though the police delay was, the police had, on GL's own evidence, advised him not to talk to others involved. He deliberately ignored this warning, including during the period when he was preparing his statement. It was not the police delay, but GL's ignoring of the police warning that led to discussion between potential witnesses. Even if the two witnesses' statements had been taken over the same period, such ignoring of police advice could not be prevented. DM was also advised not to talk to others. Even assuming that the police failed to give appropriate or sufficient warnings, it was not shown that the evidence given by Crown witnesses was thereby contaminated, in the sense of being affected or changed, whether deliberately or inadvertently, by the contacts which took place between GL and DM.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22. The applicant complains of the length of the criminal 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. The parties' submissions

23. The applicant submitted that the time taken in the investigation, trial and appeal in his case was unreasonable, both considered cumulatively and taken in separate elements. He referred in particular to the delay on the part of the investigating authorities in taking statements from the three complainants, to the delay between arrest and formal charge, the delay in the committal proceedings and bringing the matter to trial and delays in granting leave to appeal and disposal of the same. He submitted that none of the delays was his fault. In his view the proceedings were not complex, depending solely on oral evidence. The period to be taken into consideration began in September 1995 when the police began to investigate him; however, even if the period ran from his arrest, when he became aware of the proceedings, the time taken was still inordinately long.

24. The Government submitted that the case was far from straightforward, involving 20 counts and concerning events over a period of more than a decade. The trial listed for April 1999 did not take place until November 1999, a delay caused by the applicant's illness. The conduct of the authorities was reasonable, in particular the police were entitled to take the view that ongoing abuse investigations took priority over past incidents; they also had to investigate other alleged incidents of abuse which did not, in the end, go to trial. They emphasised that the only delay criticised by the trial judge was the delay in taking statements from the complainants which occurred before the applicant was affected or charged. Further, the applicant was not in custody prior to his conviction. In their view, the relevant period ran from 5 December 1997 (date of charge) to 20 December 2001 and taking into account the various determinations at various levels was not unreasonable.

B. Period to be taken into consideration

25. The Court notes that the applicant was first arrested on 20 March 1997 but released on bail after questioning. He was charged on 5 December 1997. The appeal proceedings ended on 20 December 2001, making a period of four years, nine months and one day from the date of arrest, which in this case may be taken as the relevant date at which the applicant can claim to have been substantially affected by actions taken by the prosecuting authorities as a result of a suspicion against him (e.g. *Hozee v. the Netherlands*, judgment of 22 May 1998, *Reports of Judgments and Decisions* 1998-III, p. 1100, § 43). Although the applicant, and the domestic courts criticised the length of time the police took to react to the complaints made and to take statements, this preliminary investigation stage cannot be taken into account as such in the period of criminal proceedings. No measures were taken against him and it would have been possible that the

investigation ended without any steps being taken to affect the applicant's position.

C. The Court's assessment

26. There is no doubt of the importance of what was at stake for the applicant - a serious prison sentence. Nor is the Court persuaded that the case was particularly complex. While the Government emphasised that there were 20 counts, there was no forensic or expert evidence and the issues largely turning on the credibility and reliability of the three complainants' evidence given so long after events. Some delay in the trial resulted from the applicant's illness, but this was only a few months. A further delay was caused by the removal abroad of one of the complainants who had apparently forgotten about the imminent proceedings. This perhaps might not be altogether the fault of the authorities, although the applicant claimed that they failed to keep the witness properly informed. However, it nonetheless appears that it took two years eight months from arrest to trial (20 March 1997 to 22 November 1999) and then over a further two years for the appeal to be terminated (7 December 1999 to 20 December 2001 - this included a period of over eight months before the renewed application was granted after the refusal of the single judge and just over a year from the grant of leave to appeal to the final decision of the full court). Only a short part of this period can be attributed to the applicant, whose counsel applied for a short extension in the time-limit to perfect grounds of appeal.

27. The Court would observe that in a case where there has already been some delay (unavoidable or otherwise) in bringing the matter on for trial the need for progressing the appeal reasonably expeditiously takes on more urgency. An added consideration is the fact that the trial concerned matters some years in the past and a further lapse of time could only damage the quality of the evidence available. In conclusion, there are several periods of delay which, taken together and in light of the date of the events under examination, disclose that the proceedings did not proceed with the necessary expedition and failed to satisfy the reasonable time requirement. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. 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. Pecuniary damage

29. The applicant submitted that he would have had a “fairer” trial if the authorities had proceeded with proper expedition as the delay must have influenced the evaluation of the evidence and that as he had lost a “real opportunity” an equitable sum should be awarded.

30. The Government noted that the Court had rejected as inadmissible the applicant's complaints about the fairness of his trial and submitted that the claim under this head was misconceived.

31. The Court finds no clear causal connection between any pecuniary damage and the violation of the Convention (see for example, *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, judgment of 29 July 2003, § 32) and makes no award.

B. Non-pecuniary damage

32. The applicant submitted that the inordinate delay caused him unnecessarily prolonged stress and anxiety, including depriving him of the ability to support his wife in the emotional and developmental upbringing of his children and affecting his ability to work and pursue his career. He invited the Court to award an equitable sum.

33. The Government considered that a finding of a violation would be sufficient just satisfaction in this case, finding it speculative to enter into a debate as to the type and level of distress suffered by the applicant. However if some financial relief was found appropriate, they submitted that no more than EUR 1,000 would be sufficient.

34. In the present case, the Court considers that it is reasonable to assume that the applicant suffered some distress and frustration exacerbated by the unreasonable length of the proceedings. Referring to similar cases and making an assessment on an equitable basis, the Court awards EUR 4,000 under this head.

C. Costs and expenses

35. The applicant claimed a total amount of 3,267.11 pounds sterling (GBP) for legal costs and expenses inclusive of value added tax (VAT). He included amounts of costs paid to his legal representatives during the trial and appeal, claiming that this reflected costs seeking redress for the delay or abuse aspect of the proceedings. For the proceedings before the Court, he

claimed costs for telephone and postage (GBP 36), photocopying and further postage charges (GBP 120.33) and research materials (GBP 19.50).

36. The Government considered that claiming one third of general defence costs as being concerned with vindicating Convention rights was too high an estimate. They put forward one fifth, about GBP 1,700, as a fair and generous figure. They disputed that the photocopying claim of GBP 120.33 had been shown to be related to the Strasbourg proceedings.

37. Taking into account that part of the applicant's trial related to abuse and delay issues and finding that the applicant's claims for costs of his application before the Court are reasonable in amount, the Court awards EUR 4,000 for legal costs and expenses, inclusive of VAT.

D. Default interest

38. 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*
 - (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:
 - (i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros) in respect of costs and expenses, inclusive of VAT;
 - (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 16 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Matti PELLONPÄÄ
President