



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

FOURTH SECTION

CASE OF CROWTHER v. THE UNITED KINGDOM

(Application no. 53741/00)

JUDGMENT

STRASBOURG

1 February 2005

FINAL

06/07/2005

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 Crowther v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr J. CASADEVALL, *President*,

Sir Nicolas BRATZA,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr J. BORREGO BORREGO,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 11 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 53741/00) 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 Stephen Alexander Crowther (“the applicant”), on 9 February 1999.

2. The applicant was represented by Mr P.A. Kealey, a lawyer practising in Londonderry. The United Kingdom Government (“the Government”) were represented by their Agent, Ms E. Willmott, Foreign and Commonwealth Office.

3. The applicant alleged, in particular, that the criminal proceedings against him had not been determined within a reasonable 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 July 2003, the Court declared the application partly admissible. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1946 and lives in East Sussex.

8. On 17 May 1990 the applicant was arrested, questioned at a police station in connection with an alleged importation of drugs, then refused bail and remanded in custody. On 18 December 1990, after a week-long jury trial, he was convicted of conspiracy to import a controlled drug and on 21 March 1991 he was sentenced to six years' imprisonment. On the same date, a confiscation order in the sum of GBP 22,000 was imposed, with a term of 18 months' imprisonment to be served consecutively to his main sentence if he failed to make the payment by 21 March 1992.

9. At the time of the applicant's conviction Her Majesty's Customs and Excise (henceforth, "Customs") were in possession of a Rolex watch and GBP 2,600 belonging to the applicant. According to the Government, the applicant was informed by a letter dated 16 May 1991 that the order had been registered with Chichester Magistrates' Court, but the applicant denies ever having received such a letter.

10. On 30 September 1991 Customs wrote to the solicitors who had acted for the applicant at trial and asked how and when he intended to pay the sum ordered. According to the applicant, the solicitors, who had ceased to act for him in May 1991, never informed him of this letter. They wrote to Customs on 7 November 1991 that they had no instructions from the applicant.

11. On 20 March 1992 the Magistrates' Court wrote to Customs to enquire whether action would be taken to enforce the order in default of payment. Customs replied on 23 March 1992 that the sum ordered had not been paid and that they were considering applying for a distress warrant to be issued in respect of the watch and a receiver to be appointed to deal with the applicant's property.

12. By a letter dated 8 April 1992, the Magistrates' Court informed Customs that a distress warrant could not be issued. In another letter, dated 12 August 1992, the magistrates sought information from Customs about the appointing of a receiver. Customs replied on 22 October 1992 that the sum ordered had not been paid, but that they had not applied to the High Court to appoint a receiver in the attempt to identify any realisable assets held by the applicant and that they were awaiting further instructions from their Asset Forfeiture Unit.

13. The applicant was released from prison in May 1994. He had not paid the money due under the confiscation order, but the order had not been enforced.

14. By a letter dated 24 October 1995 Customs contacted the Magistrates' Court to discover whether payment had been made. The court replied on 27 October 1995 that it had not. On 23 January 1996 Customs contacted the applicant's former solicitors to inform them that they intended to enforce payment of the order.

15. On 29 February 1996 Customs asked the court to issue a distress warrant in respect of the watch. This was issued in March 1996 and an executed copy of the warrant was sent to Customs in May 1996.

16. On 25 June 1996 a warrant was issued for the applicant's arrest to bring him to court for a means inquiry to take place in respect of the sum of GBP 17,670 outstanding on the order. The inquiry took place on 10 July 1996. The applicant attended but was not represented. The proceedings were adjourned at the applicant's request to allow him to seek legal aid and a Certificate of Inadequacy (which would dispense him from the obligation to pay the order). According to the Government, the proceedings were adjourned a further twelve times over the following seventeen months at the applicant's request. The applicant denies requesting so many adjournments.

17. On 18 November 1997 the High Court dismissed the applicant's application for a Certificate of Inadequacy. On 10 December 1997 the Magistrates' Court ordered that proceedings to enforce the confiscation order should take place. The proceedings were subsequently adjourned several more times, but the reason for the adjournments is not clear.

18. On 13 May 1998 the case was listed for 3 June 1998, and on the latter date the applicant was committed to prison for 15 months for non-payment of the sum outstanding.

19. On 7 August 1998 the applicant was granted leave by the High Court to apply for judicial review of the magistrates' decision. On 14 October 1998 the High Court refused his application for judicial review, holding that there was no reason to construe the word "consecutive" in the confiscation order in such a strict manner as to mean "in unbroken succession to the time served under the original order". Lord Justice Brooke in the High Court described the delay on the part of the enforcement authorities between October 1992 and January 1996 in enforcing the order as "wholly unexplained", and Mr Justice Sedley observed that the "Customs and Excise's inertia between March 1992 and January 1996 was both inexcusable and, given that somebody's liberty was involved, unconscionable". However, the High Court held that, as a matter of English law, once the confiscation order had been made the onus was on the applicant to pay, and "any continuing lapse of time is then in the eye of the law a product of the failure to pay, not of the failure to enforce". On 19 October 1998 the High Court refused leave to appeal to the House of Lords.

II. RELEVANT DOMESTIC LAW

20. In *Leonard Lloyd v. Bow Street Magistrates' Court* [2003] EWHC 2294, the High Court considered, subsequent to the incorporation of the Convention into domestic law, whether a defendant's right under Article 6 § 1 to have a criminal charge determined within a reasonable time was capable of being violated where delay occurred in the institution or prosecution of proceedings to commit a defendant to prison in default of payment of a sum due under a confiscation order. The court held that Article 6 § 1 applied not only to the confiscation proceedings up to the making of the confiscation order, but also to any subsequent proceedings to enforce the order by the issue of a warrant of commitment to prison; such proceedings were part and parcel of the confiscation proceedings, which in turn were part and parcel of the original criminal proceedings. It rejected the argument that, because the defendant was under a continuing duty to satisfy the confiscation order, he or she had no right to have the enforcement proceedings completed within a reasonable time, and held that the reasonable time guarantee, together with all the other Article 6 § 1 rights, applied to all aspects of confiscation proceedings. As a remedy, the High Court stayed the proceedings as an abuse of process.

THE LAW

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

21. The applicant complained that the confiscation procedure took an unreasonably long time, contrary to Article 6 § 1, which states:

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

22. The Government submitted that there had been no violation of Article 6 § 1. The criminal proceedings in question had commenced, at the earliest, in October 1995, when the Magistrates' Court informed Customs that the confiscation order had not been satisfied, because it could not be said that the applicant was “charged with a criminal offence” until steps had been taken to enforce the order. The relevant period came to an end on 3 June 1998 when the applicant was committed to prison for non-payment of the order. The delay between June 1996 and June 1998 was caused by the applicant's attempts to seek a Certificate of Inadequacy and his requests for adjournment of the enforcement proceedings.

In the alternative, the Government argued that, even if the Court were to find that the reasonable time requirement began to run from the time that

enforcement proceedings could have been brought, namely 22 March 1992, the delay still did not violate Article 6 § 1, because throughout the relevant period the applicant was under an obligation to pay the amount ordered by the Crown Court.

23. The applicant contended that he was “charged with a criminal offence” from 21 March 1991, when he received the confiscation order, or, if not then, certainly from March 1992 when he defaulted on payment and became liable to be imprisoned.

He denied that the delay was his fault. The amount of the confiscation order was wrongly calculated and he was never able to pay it, a fact of which Customs were aware, as evidenced by their failure ever to apply to have a receiver appointed. Throughout the enforcement proceedings he remained at a fixed address known to the authorities and attended court whenever required. He did not request frivolous adjournments or attempt to prolong the proceedings unnecessarily.

24. The Court recalls that Article 6 § 1 applies throughout the entirety of proceedings for “the determination of ... any criminal charge”, including proceedings whereby a sentence is fixed (see, for example, *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 279, § 69 and *Phillips v. the United Kingdom*, judgment of 5 July 2001, *Reports* 2000-VII, § 39).

25. It has held that confiscation proceedings of the type brought against the applicant are analogous to the determination by a court of the amount of a fine or the length of a period of imprisonment to be imposed on a properly convicted offender (see *Phillips*, § 34, and *Welch v. the United Kingdom*, judgment of 9 February 1995, Series A no. 307-A, p. 13, §§ 27-28). In common with such sentencing procedures, the setting and enforcement of a confiscation order does not involve the bringing of any new criminal charge against the convicted person (*Phillips*, §§ 34-35).

26. The criminal proceedings in question in the present case commenced, therefore, on 17 May 1990, when the applicant was first arrested and questioned in connection with the drugs charge (see paragraph 8 above). They were not determined until 19 October 1998, when he was denied leave to appeal to the House of Lords against the refusal to grant his application for judicial review of the magistrates' decision to commit him to prison for non-payment of the confiscation order. The proceedings lasted, in total, eight years and five months.

27. The reasonableness of the length of proceedings, in criminal as in civil cases, 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 was at stake for the applicant in the litigation (see, amongst many authorities, *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 20, 29 July 2003).

28. The applicant makes no complaint about the initial pre-trial and trial period, which culminated in the fixing of his sentence and the imposition of the confiscation order on 21 March 1991, and the Court finds no grounds for criticism of the pace of the proceedings until 21 March 1992, when the period allowed to the applicant for the payment of the confiscation order expired. Thereafter, however, a period of four years, three months of almost total inactivity elapsed until Customs took any effective steps to enforce the order, by requesting a warrant for the applicant to be questioned about his financial circumstances. The Court agrees with the assessment of Mr Justice Sedley, that Customs' inertia during this time “was both inexcusable and, given that somebody's liberty was involved, unconscionable” (see paragraph 19 above).

29. The fact that throughout this period the applicant was under a duty to pay the sum owing under the confiscation order did not absolve the authorities from ensuring that the proceedings were completed within a reasonable time. Even in respect of civil proceedings, where domestic law or practice requires the parties to take the initiative with regard to the progress of the proceedings, the State is obliged to ensure compliance with the reasonable time guarantee under Article 6 § 1 (see, *mutatis mutandis*, *Price and Lowe*, § 23). This principle must apply *a fortiori* where the State is itself a party to the proceedings and responsible for their prosecution.

30. In conclusion, the Court finds a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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.”

32. The applicant did not submit any claim for just satisfaction, and the Court does not, therefore, make any award in this respect (see Rule 60 §§ 1 and 2 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 1 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President