



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

FOURTH SECTION

**CASE OF ELAHI v. THE UNITED KINGDOM**

*(Application no. 30034/04)*

JUDGMENT

STRASBOURG

20 June 2006

**FINAL**

***20/09/2006***

*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 Elahi 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 S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 30 May 2006,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 30034/04) 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 British national, Mr Ashiq Hussain Elahi (“the applicant”), on 22 July 2004.

2. The applicant was represented by Mr B. Hussain, a lawyer practising in Birmingham. The British Government (“the Government”) were represented by their Agent, Mr Derek Walton, Foreign and Commonwealth Office.

3. On 12 July 2005, the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The facts of the case, as submitted by the applicant, may be summarised as follows.

5. The applicant was born in 1967 and, at the time of lodging his application with the Court, was serving a sentence of imprisonment in HM Prison Ranby, Nottinghamshire.

6. In October 1995, in response to an increase in the availability of heroin in Bradford, the police commenced “Operation Trafalgar”, to identify and target those responsible. On the basis of intelligence reports the police reached the conclusion that the applicant was the head of a group of Asian drug traffickers operating in the area. Video recordings made of his house and his itemised telephone bill indicated that he was in regular contact with suspected drug dealers from elsewhere in the United Kingdom.

7. On 17 July 1996, in accordance with Home Office Guidelines (“the Guidelines”: see paragraphs 16-18 of the *Khan* judgment, cited in paragraph 12 below) the Chief Constable authorised the use of a covert listening device in the applicant’s house. On 19 July 1996 the applicant was arrested for suspected car theft and a warrant was obtained to search his house for documents relating to motor vehicles. When executing the warrant the police covertly installed listening and recording equipment inside his house. Recordings were made between 19 July and 21 November 1996. The Chief Constable’s authorisation had been obtained for the entire period, except 16 August and 6 September, when the authorisation had lapsed and not been renewed, due to an oversight.

8. It was the prosecution’s case at the subsequent trial that the recordings obtained in this way revealed detailed discussions between the applicant and his co-accused demonstrating their involvement in conspiracies to import and distribute Class A drugs, in particular heroin.

9. The applicant was arrested, together with a number of alleged associates, and charged with conspiracy to import and supply Class A drugs. He and his co-accused applied to have the prosecution struck out for abuse of process and/or the recordings excluded from evidence. On 14 January 1999 the trial judge ruled against the defendants, observing as follows:

“I respectfully note the conclusion of the European Commission of Human rights in the case of *Michael Govell v. the United Kingdom*, adopted 14 January 1998, to the effect that the use of covert listening devices in accordance with the Guidelines is not done in accordance with the law and is thus in breach of Article 8, because in the United Kingdom there is as yet no legally binding publicly accessible body of law regulating such activity. I bear in mind that the Convention is not yet part of our law, but that where possible domestic law should be interpreted in accordance with Convention principles.

I take into account that in intruding on the privacy of Elahi’s home the police will have committed civil trespass and possibly criminal damage. I take into account that there may have been conduct outside the Home Office Guidelines, in that the authority for the continued use of the listening device may not have been in place between 16 August and 6 September. On the other hand, I bear in mind my finding that the police followed the Guidelines to the letter in all other respects and did not intend deliberately to circumvent the requirement to obtain the Chief Constable’s authority. I take into account that the police acted in good faith throughout in pursuit of the public good in the detection and prosecution of very serious crime. Balancing these factors, I’m satisfied that there is no evidence of abuse of power by the police

which could found the basis for a stay of the proceedings as being an abuse of process. ...

I turn next to consider the court's exclusionary power under s. 78 of the Police and Criminal Evidence Act 1984. ... Being in tape recorded form there's unlikely to be dispute about [the evidence's] authenticity. It is highly relevant and potentially probative of the defendants' involvement in the conspiracies alleged. It did not result from incitement, entrapment or inducements, or other conduct of that sort. The fact that the defendants may not have said what they did if they'd known the police were listening in does not mean that reception of evidence of what they said is unfair. The potential branches of the civil or criminal law and Article 8 and the possible lack of the Chief Constable's authority between certain dates do not affect the quality of the evidence ..."

10. Following this ruling, the applicant absconded. He was convicted in his absence on 27 August 1999, and sentenced to twelve years' imprisonment.

11. It appears that the applicant was arrested some years later, at which point he appealed against conviction, arguing that the covertly obtained recordings should not have been used at trial and that he had made the damaging recorded statements only because he had been entrapped into so doing by participating informants. His renewed application was rejected by the full Court of Appeal on 25 May 2004, on the grounds that the trial judge's ruling of 14 January 1999 was irreproachable and that there was no evidence of entrapment or any other abusive action on the part of the police.

## THE LAW

### I. RELEVANT DOMESTIC LAW AND PRACTICE

12. See the Court's judgment in *Khan v. the United Kingdom*, no. 5394/97, ECHR 2000-V, and also *Taylor-Sabori v. the United Kingdom*, no. 47114/99, 22 October 2002, and *Hewitson v. the United Kingdom*, no. 50015/99, 27 May 2003.

### II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

13. The applicant complained under Article 6 of the Convention that he had been deprived of a fair trial. Article 6, in so far as it is relevant, reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing..."

The applicant alleged that his trial had been rendered unfair by the use of the covert recording device and also by the acts of participating informants. The applicant claimed that, after his trial and conviction, but before the appeal proceedings, an informant made a statement to his solicitor which indicated that the recording device was installed as a result of information given to the police and that the police encouraged the informant to channel his conversations with the applicant in such a way as to elicit incriminating admissions.

14. The Government made no submissions under Article 6.

15. The Court considers that the applicant has failed to substantiate his complaint about the involvement of a participating informant in the investigation and it notes that the Court of Appeal found no evidence to support the allegation of entrapment. In the *Khan* judgment it found that the use at the applicant's trial of secretly taped material did not conflict with the requirements of fairness guaranteed by Article 6 § 1 of the Convention, and it finds the present case indistinguishable on this point.

16. It follows that the complaint under Article 6 § 1 is manifestly ill-founded and inadmissible pursuant to Article 35 § 3 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

17. The applicant complained under Article 8 about the use of participating informants, and also about the use of covert listening devices to obtain material which was subsequently relied on by the prosecution. Article 8, in so far as it is relevant, reads as follows:

“1. Everyone has the right to respect for his private...life...and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

18. The Government accepted that there had been a violation of Article 8 in so far as the Home Office Guidelines at the relevant time were not legally binding or publicly accessible.

### **A. Admissibility**

19. The Court observes that the complaint relating to participating informants is inadmissible for the same reasons as the linked complaint under Article 6. The remainder of the complaint under Article 8, concerning the use of a covert listening device, is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

### **B. Merits**

20. In light of the Government's admission and in accordance with its judgments in *Khan*, *Taylor-Sabori* and *Hewitson* (see paragraph 12 above), the Court finds that there has been a breach of Article 8 of the Convention in that the tape recordings from the covert listening equipment used in evidence against the applicant were not obtained "in accordance with the law".

## **IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

21. 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**

22. The applicant asked for compensation, without claiming any specific amount.

23. The Government submitted that it was a relatively straightforward case, raising issues virtually identical to those in a series of previous judgments, where the Court had not made any award of damages.

24. The Court sees no reason for distinguishing the present case from those cited in paragraph 12 above, and accordingly holds that the finding of a violation is in itself sufficient just satisfaction.

### **B. Costs and expenses**

25. The applicant also claimed GBP 128,745.27 (including value added tax, "VAT") in respect of domestic costs and expenses incurred defending

the criminal charges against him, and a further GBP 2702.50, including VAT, for the costs of bringing the application to Strasbourg.

26. The Government noted that in the more recent cases about covert surveillance (for example, *Hewitson*) the Court had made only a modest award of costs, in recognition of the fact that the case was very straightforward, and raised virtually identical issues to previous cases. In the current case, the Government were of the view that the legal costs and expenses claimed were excessively high in the light of the lack of complexity of the case, and the early stage of proceedings reached, and given the awards in similar cases. In the circumstances they suggested that a reasonable sum in respect of costs and expenses would be GBP 4,000.

27. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred, for the purpose of preventing or obtaining redress for the matter found to constitute a violation of the Convention, and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,000, covering costs under all heads, together with any tax that may be payable.

### C. Default interest

28. 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. *Declares* the complaint under Article 8 concerning the use of covert listening devices admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 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 in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) to be converted into pounds sterling at the rate applicable at the date of settlement, in

respect of costs and expenses, plus any tax 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 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 20 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Josep CASADEVALL  
President