



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

FOURTH SECTION

CASE OF BLACK v. THE UNITED KINGDOM

(Application no. 56745/00)

JUDGMENT

STRASBOURG

16 January 2007

FINAL

16/04/2007

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 Black 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 G. BONELLO,

Mr M. PELLONPÄÄ,

Mr R. MARUSTE,

Mr K. TRAJA,

Mr S. PAVLOVSKI, *judges*,

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

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 56745/00) 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 British national, Mr Wayne Thomas Black (“the applicant”), on 1 December 1999.

2. The applicant, who had been granted legal aid, was represented by Mr S. Creighton, a lawyer practising in London. The United Kingdom Government (“the Government”) were represented by their Agents, Mr C.A. Whomersley and, subsequently, Mr J. Grainger, both of the Foreign and Commonwealth Office.

3. The applicant complained under Article 6 § 1 about his adjudication proceedings pointing to the role of the Governor and the lack of a public pronouncement of the decision. He also invoked Article 6 § 3(c) as regards the lack of legal representation.

4. By a decision of 27 September 2005, a Chamber of the Fourth Section of the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (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

6. The applicant was born in 1967 and is currently in prison in HMP Longmartin.

7. On 26 July 1995 the applicant was sentenced to 20 years' imprisonment for armed robbery. On 8 January 1996 he was sentenced to consecutive sentences of 3 years' imprisonment for escaping lawful custody and of one year for assault. He was eligible for consideration for release on parole on licence on 5 September 2006 and qualifies for automatic release on licence on 5 September 2010.

8. On 29 May 1997 he was escorted to the searching area for high risk prisoners following a prison visit. Two officers conducted the strip search. During that search an item fell from the applicant's anus. The applicant immediately picked it up and re-inserted it into his anus. The officers then ordered the applicant to hand over the object. The applicant refused, stating "I cannot do that". He was charged with disobeying a lawful order contrary to Rule 47(19) of the Prison Rules 1964 (applicable at the relevant time).

9. On 31 May 1997 the hearing of the charge before the prison Governor commenced and the applicant was granted an adjournment to obtain legal advice. On 10 June 1997 he applied to the Governor for legal representation at the hearing. The hearing re-commenced on 12 June 1997. The request for legal representation was refused by the Governor.

10. The applicant's defence was that the item was a suppository. Evidence was adduced that no suppositories had been prescribed to the applicant in the 2 years prior to the incident and that the applicant had not complied with the officers' order. He was found guilty as charged. He was awarded 5 additional days' detention together with exclusion from work and forfeiture of privileges for 10 days.

11. The applicant applied to the Home Office to have the Governor's ruling quashed on the basis that he could not have handed over the item as it had already been re-inserted in his anal area. His application was rejected on 1 August 1997. He then complained to the Prisons Ombudsman who gave his opinion and recommendation on 9 August 1997. He was not persuaded that the adjudication had properly investigated the sequence of events during the search: if it was the case that the applicant had already re-inserted the item when he was asked for it, the prison officer's request to retrieve it may not have been lawful. He recommended that the Governor's finding be quashed. By letter dated 5 January 1998 the prison service confirmed that the Prisons Ombudsman's recommendation had not been accepted.

12. On 17 April 1998 the applicant applied for leave to apply for judicial review of the decision of the Governor. A hearing took place in the High

Court on 21 June 1999. The prison service submitted that effective drugs' control in prison required that they had to have the power to conduct strip searches including making a request to remove items suspected of being secreted internally. The applicant provided medical evidence to the effect that such removal risked causing harm to him. The High Court rejected the application finding, *inter alia*, that, depending as it does on the circumstances of the case, an order to a prisoner to remove an item from his anus would not necessarily be unlawful. The applicant did not appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The Court refers to its outline of domestic law and practice in *Ezeh and Connors v. the United Kingdom* ([GC], nos. 39665/98 and 40086/98, §§ 31-62, ECHR 2003-X).

14. Rule 39 of the Prison Rules 1964 (applicable at the relevant time) provided that prisoners could be searched as often as a Governor deemed necessary and that such searches were to be conducted in as seemly a manner as was consistent with discovering anything concealed. Prison guidelines added that a physical search could only be conducted by a medical officer with the consent of a prisoner.

15. Rule 47(19) of those Prison Rules provided that it was an offence against prison discipline to disobey a lawful order.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

16. The applicant argued that, in the light of the above-cited *Ezeh and Connors* judgment, Article 6 applied to his adjudication proceedings. The Government had no comment to make in this respect.

17. The Court has had regard to the reasoning and conclusion in the Court's judgment of even date herewith in the case of *Young v. the United Kingdom* in which case it found that the same charge (disobeying a lawful order), although disciplinary in domestic law and in nature, was criminal within the meaning of Article 6 § 1 having regard to the nature and severity of the penalty of detention liable to be (42 days), and actually (3 days), imposed.

18. The present applicant risked the same period of 42 days' additional detention and his actual sentence (5 days) was longer than that of Ms Young. The Court finds, for the reasons detailed in the above-cited *Ezeh*

and *Connors* judgment, that the applicant was charged with a “criminal offence” within the meaning of Article 6, which provision applies.

19. The applicant complained under Article 6 § 1 that the Governor was not independent or impartial and about the absence of a public pronouncement of the adjudication decision. The Government did not make any comment on the role of the Governor, but contested the necessity for a public pronouncement of the adjudication ruling.

20. The Court sees no reason to reach a different conclusion in the present case from that in the above-cited *Young* case. For the reasons given in the above-cited *Ezeh and Connors* judgment and in the *Whitfield and Others v. the United Kingdom* judgment (nos. 46387/99, 48906/99, 57410/00 and 57419/00, 12 April 2005), the Court finds that there has been a violation of Article 6 § 1 of the Convention as regards the lack of independence and impartiality of the tribunal and, consequently, fairness of the proceedings and that there has been an additional violation of Article 6 § 3(c) of the Convention as regards the lack of legal representation at the adjudication hearings.

21. The Court does not consider it necessary separately to examine the applicant’s complaint concerning the “public” elements of Article 6 § 1 of the Convention (*Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, § 80).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 2,500 pounds sterling (GBP) in non-pecuniary damage given the additional days’ detention awarded, the seriousness of the violation and the lack of any remedy. The Government disagreed, arguing that the finding of a violation would constitute sufficient just satisfaction.

24. As in the above-cited judgments in the case of *Findlay* (at §§ 85 and 88), *Ezeh and Connors* (at §§ 141-143) and *Whitfield and Others* (at §§ 58-59), the Court considers it impossible to speculate as to the outcome of the proceedings against the applicant had the violations of Article 6 §§ 1 and 3(c) of the Convention not occurred.

25. Accordingly, it finds that the present judgment in itself constitutes sufficient just satisfaction for any pecuniary and/or non-pecuniary damage arising from the violations of Article 6 of the Convention established.

B. Costs and expenses

26. The applicant claimed for approximately 18 hours of legal work at a charge out hourly rate of GBP 250, amounting to a total sum of GBP 5,346.25 (inclusive of VAT). The Government considered the charge out rate to be excessive, noted that certain complaints had been declared inadmissible and proposed an award of GBP 1,500.

27. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, for example, *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX).

28. The Court notes that all of the legal work in the present case was completed after the adoption of the judgment in the above-cited *Findlay* case and a significant portion was completed following the *Ezeh and Connors* judgment, the central relevance of which judgments is evident from the reasoning at paragraphs 17-21 above. In addition, certain of the complaints (under Articles 3, 5, 8 and 13) were declared inadmissible *de plano*.

29. Having regard to all the circumstances of the case, the Court awards the sum of 2,500 euros ("EUR") in respect of costs and expenses inclusive of any VAT which may be chargeable, less EUR 701 paid by the Council of Europe in legal aid, the final sum of EUR 1,799 is to be converted into pounds sterling at the rate applicable on the date of settlement.

C. Default interest

30. 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

1. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention in that the applicant did not have a fair trial by an independent and impartial tribunal;

2. *Holds* by six votes to one that there has been a violation of Article 6 § 3(c) of the Convention;
3. *Holds* unanimously that it is not necessary to examine separately the remaining complaints under Article 6 § 1 of the Convention;
4. *Holds* unanimously that the findings of a violation of Article 6 constitute in themselves sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
5. *Holds* unanimously
 - (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 1,799 (one thousand seven hundred and ninety nine euros) which is inclusive of any VAT chargeable and which is to be converted into pounds sterling at the rate applicable at 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;
6. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

J. CASADEVALL
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Maruste is annexed to this judgment

J.C.M.
T.L.E

DISSENTING OPINION OF JUDGE MARUSTE

I have expressed my detailed view on prison disciplinary proceedings in my joint dissenting opinion in the case of *Ezeh and Connors v. the United Kingdom* ([GC], nos. 39665/98 and 40086/98, ECHR 2003-X) and I remain of that opinion.

The relevant proceedings in the present case took place within the original, fully legal and still standing sentence period and were directly linked to the context of the original penal conviction (otherwise the problem would not have arisen).

It was not a fresh sentence of imprisonment: neither did it extend beyond the actual sentence. The prospect of early release was conditional, linked to the prisoner's behaviour. The prisoner is expected to behave well and to justify a munificent expectation as to his future conduct. If he or she is not well behaved, he or she has to serve more time – legally until the last day of mandatory (namely, the original) imprisonment. The judiciary has spoken and delivered judgment: its execution is delegated to the executive.

It must be admitted that prisoners have a legitimate interest in early release but there are conditions to be followed before that interest becomes a “right” requiring the application of Article 6. These conditions were not fulfilled.

It is my understanding that there is no need or justification for arranging two full scale trials within one sentence period. This is especially the case where the disciplinary “mini trial” could be examined on judicial review before High Court as indeed happened in present case.