



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

FOURTH SECTION

CASE OF YOUNG v. THE UNITED KINGDOM

(Application no. 60682/00)

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 Young 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 S. PAVLOVSCHI,

Mr L. GARLICKI, *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. 60682/00) 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, Ms Anna Young (“the applicant”), on 4 July 2000.

2. The applicant, who was granted legal aid, was represented by Mr Christian Fisher Khan, a firm of solicitors 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’s admissible complaints concerned the compliance with Article 6 of prison adjudication proceedings against her.

4. By a decision of 11 October 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 1965 and lives in London. In or around late 1999 the applicant breached an earlier probation order (concerning a charge of deception) and was sentenced to six months' imprisonment. It was her first time in prison.

7. Her term of imprisonment began in November 1999. She was accorded an unconditional release date of 23 January 2000.

A. The applicant's disability

8. The applicant suffered from cerebral palsy, a disorder of the central nervous system which can inhibit voluntary muscle control. She used a wheelchair and could only walk a few steps with assistance. She did not have voluntary control of her bladder meaning that on occasion she either could not urinate for several hours or she urinated uncontrollably and required medication to restrain this. The condition did not affect her intelligence but rather her ability to process information so that she required explanations in plain language and sufficient time for full comprehension.

9. A short medical report from a general practitioner dated 15 August 2000 noted that the applicant was a patient of the relevant practice and that her condition could have affected her ability to produce a urine sample on demand as voluntary control of the nervous system is always affected by cerebral palsy. While he suggested obtaining a neurologist's report on these matters, the applicant stated that she could not afford to obtain one.

10. The prison psychotherapist's report of 31 January 2000 noted that the applicant had been referred in December 1999 given her distress and difficulties in coping with her imprisonment. It noted as follows:

"Largely confined to a wheelchair, [the applicant] manifests obvious physical symptoms of cerebral palsy as well as somewhat less obvious mental ones. [The applicant] possesses an excellent vocabulary and a reasonably well-developed capacity to think logically that places her well in the highest range of mental functioning for those who have the condition from which she suffers. Thus it seems that she often strikes those who meet her as an individual with a normal range of mental functioning but a difficult personality.

In fact, [the applicant] experiences problems dealing with any sort of symbolism in language: she is openly vocal about her distaste for what she calls slang. Any explanation given to her needs to be couched in concrete terms devoid of metaphor or simile. Often it may be advisable or necessary to write down an explanation so that she may study it at her leisure in order to take it in fully and remember it. When this procedure is followed, she proves well able to make use of information or advice.

From [the applicant's] standpoint, these features of her mental functioning often make it difficult for her to think things through completely and thus to envision what the consequences of her actions may be. From the view point of those who deal with her, it often may seem that she is being difficult or uncooperative when it is in reality the case that she simply has not fully grasped the nuances of the subject at hand.

[The applicant's] life circumstances seem to have been troubled and unhappy. She has felt it necessary to fight ferociously to consolidate and maintain her independence. Thus the stay in <prison> appears to have been a sobering experience for her. It seems rather graphically to have brought home to her the consequences of some of her own actions – actions for which she previously had been unable to envisage consequences.

It is difficult for [the applicant] to trust anyone completely, as she feels herself to have been badly let down by key figures in her life (including her mother, foster carers et al). Yet, in a relationship which [the applicant] experiences as one of confidence and caring, she is able to show herself as a warm, even endearing individual.”

11. The applicant was detained in the medical wing of the prison since the normal prison cells were not wheelchair accessible.

B. Mandatory drug testing (“MDT”)

12. At about 11.20am on 6 January 2000 a female prison officer asked the applicant to leave her education classes. They were then met by two other female prison officers. One of them asked the applicant if she had heard about MDT. The applicant replied that she had not and she was informed that it was mandatory drug testing. One of the officers requested the applicant to provide a urine sample immediately. The applicant alleged that she said that she would not be able to produce a sample: the Government did not accept this.

13. She was taken to the MDT unit, given a container and asked to provide a specimen. While the applicant claimed that she said again that she could not provide a urine sample, the Government maintained that she simply refused to provide a sample. She claimed that she began to explain why she could not provide a sample but that her explanation was brushed aside. She was offered a cup of water, which she declined. She maintained that this was because she knew that the water would not assist because the problem was not whether her bladder was full or not but whether she had the motor control to provide a specimen on demand and because she was concerned as to whether the water was fresh.

14. The applicant was taken to her cell by the officers and she was told that she could provide her sample there. A female officer remained in the cell with her and the applicant felt distressed by this. She claimed that, at about midday, she reiterated that she could not urinate. She submitted that the prison officer appeared irritated and informed her that she was going to

put that down as a refusal which could result in additional days' detention. The Government claimed that she refused once again to provide a sample.

15. She claimed that the officers who dealt with her were brusque and business-like. None of the officers asked her about her condition or whether she would need assistance in providing the urine sample and she was not offered the possibility of speaking confidentially with a medical officer or a structured manner of providing the sample over several hours. She admitted, however, that she did not explain to them that she could not urinate as a result of her disability. She alleged that she did inform the officers that she was menstruating (the Government disputed this) but, in any event, she accepted that she did not use her menstruation as an excuse for not providing a urine sample.

C. The adjudication proceedings

16. On 7 January 2000, at approximately 7.00-7.30 a.m., a male officer came into the applicant's cell and read an "official-sounding" paper about "a refusal". The applicant was asked to sign it but refused to do so. She maintained that this was because she had just woken up and did not understand what was happening. The paperwork was left in her cell. This paperwork appears to have been a notice of report, which informed the applicant that she had been placed on report for the alleged offence of disobeying a lawful order to provide a urine sample.

17. Later that day, she was sent to see the Governor when it was explained to her that she was being "put on report". There were two officers in the room at the same time. Her account was that, feeling intimidated and not understanding the jargon they were using, she asked if she could have someone with her. The Governor refused, stating that this would only be allowed for someone with severe learning difficulties. The Governor did not ask her if there were any medical reasons why she should be assisted. The Government disputed the applicant's account of this meeting.

18. The matter was adjourned to the following week, to allow the relevant prison officer to attend to give evidence. In the meantime, the applicant was seen by a medical officer who certified her as fit to take part in the hearing. She did not inform the medical officer either that her disability had prevented her from providing a urine sample, explaining that this was because the medical officer never asked.

19. On 11 January 2000 the applicant appeared again before the Governor. The Government submitted the record of the adjudication hearing which was filled out by the Governor at the hearing. Question 7 on Part 2 of the form enquires: "Do you want any additional help at this hearing? (If yes, explain the possibilities of assistance by a legal friend or legal representative)". The Governor had ticked the box saying "No". The applicant claimed that her request for legal representation was refused.

20. The applicant submitted that she was not asked any questions about her disability or whether she had problems urinating. The allegation of a refusal to give a sample was put to her. She claimed that she tried to explain as best she could and that the Governor indicated that most people could provide a sample when asked and he noted that she had refused water. She accepted that she did not inform the Governor during the adjudication hearing that her disability had prevented her from providing a urine sample. The Governor found the charge of disobeying a lawful order to have been proven and sentenced the applicant to 14 additional days' detention. She was informed that she could appeal.

21. With the assistance of the prison chaplain, she obtained and completed on 12 January 2000 a complaint form. She noted in the form that she had not represented herself as well as she wished and would have benefited from a prepared statement. She indicated that she had bladder problems, exacerbated by the stress of her imprisonment and she disclosed that she had been menstruating. She indicated her willingness to provide a urine sample and requested to be allowed the time for which Rule 46A(7) of the Prison Rules 1964 had provided. In an attached statement, she made it clear that she had not refused to provide the sample but simply could not due to her disability. She indicated that she had recently gone more than 24 hours without urinating. She further requested some assistance in order to comply with the prison rules as they had been drafted with able-bodied persons in mind and did not make allowances for those with disabilities. She expressed extreme distress at having to discuss her bodily functions and requested that the 14 additional days' be withdrawn.

22. On 14 January 2000 the Governor replied that he had spoken to the prison chaplain, read the applicant's submissions and discussed the case with the prison service area manager, the latter of whom had read the papers. The area manager agreed that the charge had been proven and that the award of additional days could be reduced to 3 additional days (with no association with other prisoners for 3 nights and 7 days' stoppages in pay). She was also to provide a urine sample under the MDT arrangements.

23. The applicant sought legal advice. Her legal representatives could not contact her by telephone and were offered a visit after her initial release date. Accordingly, they made written representations by letter dated 19 January 2000 to the Governor and to the prison service area manager outlining the applicant's condition, how that had prevented her providing the sample and her distress and embarrassment. They sought the withdrawal of the 14 additional days' award, in default of which proceedings under the Disability Discrimination Act 1995 would be pursued.

24. The applicant was released on 26 January 2000. In his letter of 27 January 2000 to the applicant's representatives (confirming a telephone conversation of 20 January 2000) the area manager stated that, while information was received by the Governor after the adjudication causing

him to vary the sentence, that information did not cause the Governor or the writer to consider that the finding of guilt was flawed or should be quashed. He was further satisfied that the adjudication was conducted in a fair and proper manner. He noted that the applicant had not explained her difficulties to the officers involved in the test process, nor availed herself of the opportunity subsequently to talk through the issues with the Governor. That letter indicated that a medical officer had informed the Governor that she had been fit to appear and had made no comment to the Governor that she was unable to comply with an order to provide a sample.

25. On 11 July 2000 the applicant's representatives complained to the Home Secretary about the prison adjudication matter. They received an acknowledgement dated 8 August 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Forfeiture of remission and awards of additional days

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

B. Mandatory Drugs' Testing ("MDT")

27. MDT is permitted by section 16A(1) of the Prison Act 1952 (as amended in 1994). Section 16A(2) allows the request for a sample of any other description specified in the authorisation, not being an intimate sample, instead of or in addition to a urine sample.

28. Rule 50 of the Prison Rules 1999 provides as follows:

"(1) This rule applies where an officer, acting under the powers conferred by section 16A of the Prison Act 1952 (power to test prisoners for drugs), requires a prisoner to provide a sample for the purpose of ascertaining whether he has any controlled drug in his body.

(2) In this rule "sample" means a sample of urine or any other description of sample specified in the authorisation by the governor for the purposes of section 16A of the Prison Act 1952.

(3) When requiring a prisoner to provide a sample, an officer shall, so far as is reasonably practicable, inform the prisoner:

(a) that he is being required to provide a sample in accordance with section 16A of the Prison Act 1952; and

(b) that a refusal to provide a sample may lead to disciplinary proceedings being brought against him.

(4) An officer shall require a prisoner to provide a fresh sample, free from any adulteration.

(5) An officer requiring a sample shall make such arrangements and give the prisoner such instructions for its provision as may be reasonably necessary in order to prevent or detect its adulteration or falsification.

(6) A prisoner who is required to provide a sample may be kept apart from other prisoners for a period not exceeding one hour to enable arrangements to be made for the provision of the sample.

(7) A prisoner who is unable to provide a sample of urine when required to do so may be kept apart from other prisoners until he has provided the required sample, save that a prisoner may not be kept apart under this paragraph for a period of more than 5 hours.

(8) A prisoner required to provide a sample of urine shall be afforded such degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; in particular a prisoner shall not be required to provide such a sample in the sight of a person of the opposite sex.”

29. Rule 51(22) of the Prison Rules 1999 provides that it is an offence against prison discipline to disobey a lawful order.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

30. The applicant contended that the adjudication proceedings had violated Article 6 §§ 1 and 3 in numerous respects.

A. Applicability of Article 6 of the Convention

31. The applicant argued that, in the light of the above-cited judgment in *Ezeh and Connors v. the United Kingdom*, Article 6 applied to her adjudication proceedings. Prior to the admissibility of the case, the Government accepted that Article 6 applied to the adjudication proceedings and after admissibility made no further comment.

32. The Court notes that the starting-point, for the assessment of the applicability of the criminal aspect of Article 6 of the Convention to the present proceedings, is the criteria outlined at paragraph 82 of the judgment in *Engel and Others v. the Netherlands* (judgment of 8 June 1976, Series A no. 22):

“...[I]t is first necessary to know whether the provision(s) defining the offence charged belong, according to the legal system of the respondent State, to criminal law, disciplinary law or both concurrently. This however provides no more than a starting point. The indications so afforded have only a formal and relative value and must be examined in the light of the common denominator of the respective legislation of the various Contracting States.

The very nature of the offence is a factor of greater import. ...

However, supervision by the Court does not stop there. Such supervision would generally prove to be illusory if it did not also take into consideration the degree of severity of the penalty that the person concerned risks incurring.”

33. In its more recent judgment in the case of *Ezeh and Connors*, the Court clarified as follows:

86. In addition, it is the Court’s established jurisprudence that the second and third criteria laid down in *Engel* are alternative and not necessarily cumulative: for Article 6 to be held applicable, it suffices that the offence in question is by its nature to be regarded as “criminal” from the point of view of the Convention, or that the offence made the person liable to a sanction which, by its nature and degree of severity, belongs in general to the “criminal” sphere This does not exclude that a cumulative approach may be adopted where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge

...

120. The nature and severity of the penalty which was “liable to be imposed” on the applicants ... are determined by reference to the maximum potential penalty for which the relevant law provides

The actual penalty imposed is relevant to the determination ... but it cannot diminish the importance of what was initially at stake (see *Engel and Others*, cited above, p. 36, § 85, together with *Demicoli*, *Garyfallou AEBE* and *Weber*, loc. cit.).”

34. In its *Ezeh and Connors* judgment, the Court referred specifically to the following extract from paragraph 82 of the *Engel* judgment:

“In a society subscribing to the rule of law, there belong to the ‘criminal’ sphere deprivations of liberty liable to be imposed as a punishment, except those which by their nature, duration or manner of execution cannot be appreciably detrimental. The seriousness of what is at stake, the traditions of the Contracting States and the importance attached by the Convention to respect for the physical liberty of the person all require that this should be so.”

and went on to conclude (at paragraph 126) that:

“Accordingly, given the deprivations of liberty liable to be and actually imposed on the present applicants, there is a presumption that the charges against them were criminal within the meaning of Article 6, a presumption which could be rebutted entirely exceptionally, and only if those deprivations of liberty could not be considered “appreciably detrimental” given their nature, duration or manner of execution.”

35. The offence at issue in the present case (failure to obey a lawful order) was, in the Court's view, disciplinary in law and in nature. It was one of the listed prison disciplinary offences (see paragraph 29 above) which could only be prosecuted by the prison services. Its aim was to maintain discipline within the prison and there was no apparent civilian criminal equivalent (*Campbell and Fell v. the United Kingdom*, judgment of 28 June 1984, Series A no. 80, § 71).

36. However, the *Engel* criteria being alternative and not necessarily cumulative, the "criminal" nature of the relevant "offence" could, in principle, be determined solely on the basis of the nature and severity of the sanction.

37. It was not disputed, and the Court has already found, that the additional days' detention awarded amounted to a deprivation of liberty (the above-cited *Ezeh and Connors* case, §§ 124-125). Since a deprivation of liberty was liable to be and was actually imposed on the applicant, there was a presumption that the charge against her was "criminal", a presumption which could be rebutted entirely exceptionally and only if her deprivation of liberty could not be considered "appreciably detrimental" given its nature, duration or manner of execution (the above-cited *Ezeh and Connors* judgment, at § 126). Having initially maintained that she had spent 3 additional days in prison, she indicated, without more and for the first time, in her just satisfaction submissions that she had spent 5 additional days in prison: however, she has not explained or substantiated this change in her submissions or reacted to the Government's challenge to this later factual submission. The Court finds that the applicant was awarded and served 3 additional days' detention.

38. The Court considers that the deprivation of liberty which was liable to be (42 days), and which actually was (3 days), imposed on the applicant cannot be regarded as sufficiently unimportant or inconsequential as to displace the presumption as to the criminal nature of the charge against her.

39. It finds that the applicant was charged with a "criminal offence" within the meaning of Article 6 which provision applies therefore to her complaints.

B. Waiver

40. The parties disputed whether the applicant had refused legal representation at the adjudication hearing and, therefore, whether she had waived any rights in that respect under Article 6 of the Convention. However, the Court does not consider it is necessary to resolve this factual dispute because, even assuming the Government's account to be factually correct, it is not considered that any such waiver could be considered valid. In this respect, it is recalled that a waiver of a right guaranteed by the Convention - in so far as it is permissible - must not run counter to any

important public interest, must be established in an unequivocal manner and requires minimum guarantees commensurate to the waiver's importance (*Håkansson and Stureson v. Sweden* judgment of 21 February 1990, Series A No. 171, § 66 and *Pfeifer, Plankl v. Austria*, judgment of 25 February 1992, Series A No. 227, § 37 and *Thompson v. the United Kingdom*, no. 36256/97, § 43, 15 June 2004).

41. According to the Government's own account, the applicant was asked if she wished to have "help" at the hearing and the record of the adjudication indicated that, if she answered in the affirmative, she would be informed of the assistance and legal representation "possibilities". There is therefore no indication she was in fact clearly offered legal representation for the hearing as opposed to the assistance of a friend/layperson. In addition, given the applicable domestic law and practice (outlined in the *Ezeh and Connors* judgment, §§ 59-62), any outline of the legal presentation "possibilities", in the event of such an affirmative response from her, would not have indicated with any certainty that such representation would be available. Moreover, any choice would have been put to her at the adjudication hearing itself at which she was unassisted. Furthermore, she would have been required to respond to the Governor who conducted the hearing and who was charged with maintaining prison discipline and was responsible for the pursuit of the charges against her, for determining guilt or innocence and for fixing her sentence. The Court does not consider that, even accepting the Government's submissions, the circumstances demonstrate that any choice by the applicant as regards legal representation could be considered unambiguous and free. Accordingly, and in so far as such a waiver would be permissible and not run counter to any important public interest, it is not established to have been unequivocal and accompanied by guarantees commensurate to its importance (the *Thompson* judgment, at § 44).

C. Compliance with Article 6 §§ 1 and 3

42. The applicant complained under Article 6 § 1 that the Governor was not independent and that she was not allowed legal representation. She also complained that she had not been informed in a language she understood and in detail of the nature of the charge against her (Article 6 § 3(a)); that she had not had adequate time or facilities for the preparation of her defence (Article 6 § 3(b)); and that she had not been given legal assistance (Article 6 § 3(c)). Prior to admissibility the Government accepted that the Governor could not be considered independent and impartial but submitted that the applicant had waived her rights as regards legal representation and, following admissibility, reiterated that the applicant had been asked but declined assistance at the hearing.

43. The Court has already found in the case of *Whitfield and Others v. the United Kingdom* (nos. 46387/99, 48906/99, 57410/00 and 57419/00, § 45, 12 April 2005, a direct application of the above-cited *Ezeh and Connors* judgment) that, since Governors were answerable to the Home Office, drafted and laid the charges against the applicants, investigated and prosecuted those charges and determined the applicants' guilt or innocence together with their sentences, it could not be said that there was any structural independence between those charged with the roles of prosecution and adjudication. The Court found therefore in the *Whitfield and Others* case that those applicants' doubts about the independence and impartiality of their adjudications were objectively justified, that their adjudications were consequently unfair and that there had been therefore a violation of Article 6 § 1 (*Cooper v. the United Kingdom* [GC], no. 48843/99, §§ 104-106, ECHR 2003 XII, the latter citing *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I)). The Court in the *Whitfield and Others* case also found a separate violation of Article 6 § 3(c) of the Convention given the lack of legal representation for the applicants' prison adjudication hearings (mainly relying on the *Ezeh and Connors* judgment, cited above, at § 134, which in turn relied on *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, § 64).

44. The Court sees no reason to reach a different conclusion in the present case from that in the *Whitfield and Others* case and, for the reasons given in the above-cited *Ezeh and Connors* judgment, finds that there has been a violation Article 6 § 1 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 hearing.

45. The Court does not consider it necessary separately to examine the applicant's additional complaints, whether under Article 6 §§ 1 or 3, concerning the fairness of those proceedings (the above-cited *Whitfield and Others* judgment, at § 46).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 7,000 pounds sterling (GBP) in compensation for pecuniary and non-pecuniary loss as well as interest at a rate of 6%. She argued that she had established a causal link between the violations established and a loss of real opportunity (*Goddi v. Italy*, judgment of 9 April 1984, Series A no. 76, § 35; *Perks and Others v. the United Kingdom*, nos. 25277/94, 25279/94, 25280/94, 25282/94, 25285/94, 28048/95, 28192/95 and 28456/95, §§ 80-81, 12 October 1979, and the above-cited *Ezeh and Connors* judgment, § 112). She referred to the award of additional days’ detention, to the loss of prison pay and to “legal costs and expenses”. The Government contested these claims arguing that the finding of a violation constituted sufficient just satisfaction.

48. The Court has had regard to the letter of the area manager of 27 January 2000 in response to the applicant’s legal representatives and does not consider that the present case demonstrates a loss of real opportunity of the nature established in the above-cited cases of *Perks and Others* or *Whitfield and Others*.

49. Accordingly, and as in the above-cited cases of *Findlay* (at §§ 85 and 88), *Ezeh and Connors* judgment (at §§ 141-143) and *Thompson* (at §§ 51-52), the Court considers that it is 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.

50. 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

51. The applicant claimed legal costs and expenses “under a Conditional Fee Agreement” (“CFA”) in the sum of GBP 8,812.50 (inclusive of VAT) in solicitors’ fees but excluding any success (or supplemental) fee: no invoices or further breakdown were submitted. A total of GBP 12,619.52 in Counsel’s fees was claimed on the basis of fee notes for approximately 55 hours of work between June 2000 and January 2006, the charge out rates beginning at GBP 150 per hour and rising to GBP 250 per hour in late 2005.

52. The Government considered these amounts excessive. They noted that a number of complaints (under Articles 3, 8, 5, 13 and 14 of the Convention) had been declared inadmissible and that much of the legal work had been done after the delivery of the key *Ezeh and Connors* judgment. They also noted that no invoices had been submitted as regards the solicitors' fees. They further pointed to the CFA stating that an issue arose as to whether the expenses claimed had actually been incurred by the applicant and they invited the Court to consider whether, given the CFA, a discount was appropriate.

53. The Court recalls that only legal costs and expenses demonstrated to have been actually and necessarily incurred and to be reasonable as to quantum are recoverable under Article 41 of the Convention (*Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX). It is also recalled that CFAs may show, if they are legally enforceable, that the sums claimed are actually payable by the applicant and the Court must, as always, assess whether they were reasonably incurred. It will take as a basis for its assessment, *inter alia*, the information provided by the applicant in support of the claims namely, the number of hours of work and the number of lawyers necessitated by the case together with the hourly rates sought (*Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI).

54. As to the solicitors' fees and even noting the CFA and therefore the absence of any drawn invoices, the applicant could clearly have submitted an itemised costing indicating the hours worked, by which solicitor, on what item of work and those solicitors' hourly rates. The applicant has provided no such details even though the terms of Rule 60 of the Rules of Court were brought to her attention in the Registry's letter requesting her just satisfaction submissions, and noting that the costs had to be itemised and some proof furnished as to their being actually and necessarily incurred and despite the Government's comment on the absence of any invoices as regards the solicitors' fees. In such circumstances, the Court makes no award as regards the solicitors' costs claimed.

55. As to Counsel's fees, the Court observes that all Counsel's legal work was completed after the delivery of the judgments in the above-cited *Findlay* and *Benham* cases and over half was completed after the delivery of the *Ezeh and Connors* and *Cooper* judgments, the central relevance of which judgments is evident from the Court's reasoning at paragraphs 43 and 44 above. A number of the applicant's complaints were also declared inadmissible (Articles 3, 8, 13 and 14), although after they had been communicated to the respondent Government.

56. Having regard to all the circumstances of the case, the Court awards the sum of 3,500 euros ("EUR") in respect of Counsel's fees, inclusive of any VAT which may be chargeable but less EUR 701 paid by the Council

of Europe in legal aid, the final sum of EUR 2,799 to be converted into pounds sterling at the rate applicable on the date of settlement.

C. Default interest

57. 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 in that the applicant did not have a fair trial by an independent and impartial tribunal;
2. *Holds* that there has been a violation of Article 6 § 3(c) of the Convention;
3. *Holds* that it is not necessary to examine separately the remaining complaints under Article 6 of the Convention;
4. *Holds* 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*
 - (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 2,799 (two 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* 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 concurring opinion of Mr Maruste is annexed to this judgment

J.C.M.
T.L.E

CONCURRING OPINION OF JUDGE MARUSTE

While I would maintain my general position in respect of prison disciplinary proceedings expressed in a joint dissenting opinion in the case of *Ezeh and Connors v. the United Kingdom* ([GC], nos. 39665/98 and 40086/98, ECHR 2003-X), in this particular case I am with the majority in favour of a violation but for different reasons. My understanding is that in this exceptional case the authorities failed to handle what was a very specific situation adequately and with the necessary flexibility. The physical and mental particularity of the applicant was evident, established by doctors and known (or at least should have been known) to the prison staff. Under these circumstances, the rigidity in the application of the rules was simply unnecessary.