



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

FOURTH SECTION

CASE OF BHANDARI v. THE UNITED KINGDOM

(Application no. 42341/04)

JUDGMENT

STRASBOURG

2 October 2007

FINAL

31/03/2008

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 Bhandari 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 S. PAVLOVSKI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 11 September 2007,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 42341/04) 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 Manmohan Bhandari (“the applicant”), on 18 November 2004. The United Kingdom Government (“the Government”) were represented by their Agent, Mr J Grainger, of the Foreign and Commonwealth Office.

2. On 13 December 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

3. The applicant was born in 1934 and lives in the Isle of Man. He grew raspberries there and had a lucrative contract with the shop Marks & Spencers, but lost it in 1990 when the local environmental health officer let it be known to the shop that the applicant was packing raspberries in his kitchen. The applicant and his wife sued the Department of Local Government and the Environment ('DOLGE') for mis-statement and were awarded over GBP 16,000 in damages by the Manx High Court on 1 April 1993. The applicant did not consider that this was enough, and, wishing to

appeal, instructed a new (Manx) advocate, a Mr Carter, then a partner in a firm of advocates called Carter Jones McDonald ('CJM').

Mr Carter advised that there was merit in an appeal, and applied for legal aid on his client's behalf in April 1993: this application was rejected on 25 May 1993. The applicant's Petition of Appeal from the first instance judgment was rejected the next day because it had been filed two days late. Mr Carter advised (via letter and at a meeting) that it would not be unduly difficult to apply for an extension of time in which to lodge the appeal, but that, in the circumstances, the best course of action was for the applicant to cut his losses and to accept an offer put forward by DOLGE. The applicant accepted this advice and, on 17 June 1993, DOLGE's offer of GBP 20,000.

4. CJM issued proceedings against the applicant for payment of their fees on 7 December 1993. An advocate instructed by the applicant to defend the claim failed to file a Defence in the prescribed period, and judgment was entered for CJM on 5 January 1994. After taxation of CJM's costs, judgment was issued on 2 March 1995 for a total of GBP 929.80. Mr Carter then applied for execution of the judgment and on 9 October 1995, the applicant's property was placed under arrest by the Coroner. The applicant appealed on 30 October 1995 and on 7 November 1995 Mr Carter wrote to the Coroner and the applicant requesting that no further steps be taken in respect of the enforcement of the execution against the applicant until specifically instructed. It appears that the execution remained suspended until the judgment of 17 November 2003 detailed below.

5. After a delay occasioned by their difficulty in obtaining legal aid, the applicant and his wife brought proceedings on 26 March 1996 against CJM in negligence, claiming that CJM's actions and omissions in April-June 1993 had deprived them of the opportunity to pursue their appeal against the first instance decision in their case against DOLGE. These proceedings are referred to hereafter as "the CJM proceedings." In them, the applicant and his wife were represented throughout by leading Counsel from England, who had been granted a special temporary licence as a Manx advocate. The proceedings were heard by Acting Deemster Hall, succeeded by Acting Deemster Newey.

6. The summons issued on 26 March 1996 was not served on CJM until 20 March 1998, the time for service of the summons having been extended by the High Court on 27 February 1997. After the applicant filed a motion for judgment in default of defence on 22 June 1998, it appears a first defence was served out of time on 7 July 1998. A second defence was served on 16 September 1998. After the service of this second defence, a motion filed by the applicant for judgment in default was dismissed by consent on 17 September 1998. On 25 January 1999 the defendants filed a motion for a split trial between liability and quantum issues, which was dismissed on 25 October 2000. It appears that there had been no correspondence between the parties and the High Court between 27 July

1999 and 6 January 2000, leading the High Court to write to the defendants on 26 January 2000 indicating, *inter alia*, that Acting Deemster Hall “was very anxious to progress the matter”. After the dismissal of the defendant's motion for a split trial on 25 October 2000, it appears it was incumbent on the applicant to apply to have the case set down for trial within 28 days of this date. No application was made. On 12 January 2001, the High Court wrote to the applicant's solicitors requesting that they make the necessary application as soon as possible. On 19 January 2001, the applicant's solicitors replied, apologising for the delay in their application. On 22 January 2001, the High Court replied with instructions from the Acting Deemster that the case be set down for trial within 28 days. Both parties responded expressing concern at this proposal.

It further appears that throughout 2001 the parties each filed a number of motions, the defendants requesting a stay in the proceedings and each seeking leave to amend the statement of case, the defence and reply. Further such motions were sought throughout 2002 and January and February 2003. On 31 October 2002 and 12 February 2003, the High Court made orders setting further directions for the proceedings. Further orders were agreed by consent between the parties on 21 June 2001, 1 February 2002 and 17 July 2002, in each instance agreeing to a revised timetable and date for trial. On 20 December 2002 the applicant issued a motion for additional time to serve a further expert report to which the defendants responded with a motion that the action be struck out for non-compliance with orders of the High Court. In order to hear the motions, the High Court vacated the scheduled trial date. They were heard on 12 February 2003 with the defendant's motion being dismissed, the applicant being given leave to serve the expert report and further directions being given to the parties.

7. The CJM proceedings did not therefore come to trial before Acting Deemster Newey until 21 March 2003, at which point CJM essentially conceded liability and limited themselves to contesting quantum. By a judgment dated 17 November 2003: (1) the judgments obtained by CJM in 1995 were set aside (by consent) and these earlier proceedings dismissed; and (2) the applicant and his wife were awarded the sum of GBP 10,780.93 plus interest of GBP 8,567.13.

8. The applicant and his wife appealed against the quantum of the award; their appeal was dismissed on 25 May 2004. In a detailed 37 page judgment, the High Court of Justice of the Isle of Man (Staff Government Division) considered and dismissed each head of their challenge to the conclusions of the first instance judge. It seems that the applicant's Counsel was directed by the lead judge at the end of the hearing that his interest was now at end.

9. The applicant wished to apply to the Privy Council for special leave to appeal directly to the Council but it appears that after failing to obtain such

leave as a “poor person” and failing to obtain legal aid from the Manx authorities, he did not do so.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. Rule 6 of Order 2 of the Rules of the High Court of Justice of the Isle of Man provides that for the purpose of service, a summons is valid in the first instance for twelve months beginning with the date of its issue by the Chief Registrar. Where a summons has not been served on a defendant, the Court may by order extend the validity of the summons for a period, not exceeding twelve months at any one time.

Rule 1 of Order 22 provides that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Rule 7 of Order 47 provides that a Court shall have power to enlarge or abridge the time appointed by the Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require. Any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Rule 8 of the same Order provides that the time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court.

THE LAW

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

11. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention. That provision, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

12. He maintained that since the execution of the judgment given against him on 2 March 1995 remained suspended until it was set aside in the judgment of 17 November 2003, the first set of proceedings could not be said to have been concluded in 1995. He further argued that since the defendant in the second set of proceedings (the CJM proceedings) had

stated that the invoices which had been the subject of the first set of proceedings should never have been raised, the period under consideration ran from the start of the first set of proceedings and did not end until the conclusion of the second set of proceedings.

13. The applicant argued that while the proceedings were not complex there were some legal issues of an exceptional nature. However, there were significant delays in the course of the proceedings. In particular, he referred to a delay of six months in waiting for a defence to his original claim to be lodged. It took twenty-two months to hear the defendant's motion for a split trial and thirteen months to obtain legal aid to commission expert reports. Finally, three months were lost while the defendant refused to accept service of one of these reports. He did not accept that certain of the delays in the course of the proceedings were attributable to him and argued that all delays were attributable to his solicitors, for whom he could not be held responsible, the defendants and the competent authorities. As to what was at stake for him, the applicant argued that as a result of the negligence of CJM, he and his family had suffered due to a shortage of funds from 1993 until judgment was given in 2003.

14. The Government maintained that the proceedings started on 26 March 1996 (when the applicant's summons was issued) and ended on 25 May 2004 (when the High Court of Justice of the Isle of Man (Staff Government Division) handed down its judgment). The proceedings which began on 7 December 1993 were separate in that they involved different parties and ended two years before the summons was issued in the applicant's claim against CJM. They recognised that the factual background to both sets of proceedings was the same and that the applicant could have raised issues of negligence in the first set of proceedings by way of a counterclaim. However, he did not do so and, as a result, separate and distinct proceedings were necessary in order to raise these issues.

15. The Government argued that there was no breach of the reasonable time requirement of Article 6 § 1. The Government did not submit that the proceedings were particularly complex but argued that they could not be viewed as straightforward: the applicant's damages claims required a ten-day trial period due to extensive and expert evidence adduced by the applicant and the proceedings had resulted in a lengthy judgment and an appeal. In addition, a substantial proportion of the delay in the proceedings was caused by the applicant himself. In particular, he was responsible for an initial two year delay in serving the summons. He had pursued a motion for judgment in default even after the defence had been served and failed to serve his list of documents until five months after it was due to be served. The applicant's solicitors had been expected to set down the case for trial within 28 days of 25 October 2000 but had not done so by 19 January 2001. The applicant had failed to provide adequate disclosure of documents in 2001 and failed to comply with the revised timetable then given by the

court. Finally the applicant was responsible for further delays while he produced a further expert's report, leading to the postponement of the trial for six weeks.

The Government also submitted that additional delays were attributable to the defendants in the proceedings, in particular pursuing a motion for the trial of the action to be split between liability and quantum issues, which in the Government's view was misconceived. While there had been a greater than usual delay on the part of the High Court in listing an interlocutory hearing of this motion, this delay was relatively small compared with the delays caused by the applicant and the defendants and in all other aspects the High Court had facilitated the proceedings and engaged in active case management.

A. Admissibility

16. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

17. Since the period to be taken into account is a matter of dispute between the parties, the Court must first determine this before examining the merits of the case. When determining the period to be taken into account, the Court has regard to its case-law according to which in civil proceedings, the “reasonable time” begins at the moment the action was instituted before the tribunal and extends right up to the decision which disposes of the dispute (*'contestation'*) (for example, *Erkner and Hofauer v. Austria*, judgment of 23 April 1987, Series A no. 117, §§ 64 and 65).

In respect of separate sets of proceedings, for the purposes of calculating the period to be taken into consideration, the Court has only considered such proceedings *in toto* where the proceedings are indissociable and concern essentially the same dispute (*'contestation'*); for example, where proceedings on the merits of a claim are followed by enforcement proceedings (*Di Pede v. Italy*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, §§ 22-24; *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, § 40) or where compensation proceedings follow proceedings concerning expropriation (*Kukkola v. Finland*, no. 26890/95, § 41, 15 November 2005; *Saarenpään Loma Ky v. Finland*, no. 54508/00, § 28, 13 February 2007).

In the present case, the Court does not discern any such link between the first and second set of proceedings. While both sets of proceedings arose from CJM's representation of the applicant in his case against DOLGE, the

dispute was not the same in each set of proceedings: the first set concerned money owed by the applicant to CJM, the second set concerned the applicant's claim that CJM had been negligent in the case against DOLGE. Nor could the applicant's claim against CJM in the second set of proceedings be said to follow automatically from any finding in the first set of proceedings since the decision to start the second set of proceedings was a matter entirely for the applicant and the first set of proceedings had resulted in a judgment against him. The applicant does not complain separately about the length of the first set of proceedings.

Finally, the Court notes the applicant's argument that the first set of proceedings could be said to have lasted until 17 November 2003 on the ground that the execution of the judgment of 2 March 1995 remained suspended until the judgment of 17 November 2003.

The Court concludes therefore that the period to be taken into consideration began on 26 March 1996 (when the applicant and his wife brought proceedings against CJM) and ended on 25 May 2004 (when the High Court of Justice of the Isle of Man (Staff Government Division) dismissed the applicant's appeal). It thus lasted 8 years and 2 months for two levels of jurisdiction.

18. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Philis v. Greece* (no. 2), judgment of 27 June 1997, *Reports* 1997-IV, p. 1083, § 35).

19. The Court agrees with the parties that the proceedings were not legally complex. While it also agrees that the proceedings were not entirely straightforward, notwithstanding the expert evidence adduced by the applicant, the Court is not persuaded that they were factually or administratively difficult. By the time the proceedings came to trial CJM adduced no evidence at all and had in substance admitted liability.

20. The Court recognises that while what was at stake for the applicant had some financial importance, its significance cannot be said to have been exceptional. This is reflected in the decision of the trial judge to award substantially less in damages than the applicant and his wife had claimed, a decision confirmed on appeal by the High Court of Justice of the Isle of Man (Staff Government Division). However, the damages awarded, which included interest, amounted to over GBP 19,000 and were not negligible. Furthermore, in light of the difficulties encountered in the previous proceedings, the CJM proceedings had taken on an added significance for the applicant. In this connection the Court also notes the conclusion of the trial judge that the applicant and his wife were victims of negligence on the

part of DOLGE and Mr Carter, a conclusion that led him to state his 'enormous sympathy' for them.

21. It is true that the proceedings took place before two instances and that, as the Government pointed out in their observations, some delay was caused by the applicant's attempts to adduce extensive expert evidence and his failure to abide by the time limits set down by the Court, particularly after the High Court had set down a revised timetable in an effort to expedite proceedings. The Court also finds that the applicant bears primary responsibility for the initial delay in the proceedings due to the failure promptly to serve the summons on the defendants, though it also notes that time for service was extended by the High Court on 27 February 2007.

22. Nonetheless, the Court finds that there were periods of inactivity for which no satisfactory explanation has been given by the Government. The Court is particularly struck by the fact that it took one year and ten months for the defendant's motion for a split trial to be heard and dismissed. In this respect it is also significant that during this period the only other developments in the proceedings were the service of the applicant's list of documents and the letter from the High Court of 26 January 2000. The Court also notes the fact that after the dismissal of this motion, the greater part of 2001 and 2002 was taken up by successive amendments and re-amendments to the statement of case, the defence and reply. The Court recognises that some responsibility for these delays must lie with the parties and that they agreed to a series of consent orders revising the timetable for the proceedings. However, this does not absolve the State from the requirement to deal with cases in a reasonable time. The Court recalls that the State remains responsible for the efficiency of its system (*Guincho v. Portugal*, judgment of 10 July 1984, Series A no. 81, § 38) and the manner in which it provides for mechanisms to comply with the reasonable time requirement – whether by automatic time-limits and directions or some other method – is for it to decide. If a State allows proceedings to continue beyond the “reasonable time” prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (see *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003, together with further references therein). In this respect, the Court notes that it does not appear that the High Court took active steps to expedite the proceedings until its orders of 31 October 2002 and 12 February 2003. The Court therefore considers that the delays in the CJM proceedings derived, to a large extent, from the failure by the State to take adequate steps to advance the proceedings and, more generally, to organise its system in such a way as to meet its Convention obligations (see also *Mitchell and Holloway v. the United Kingdom*, no. 44808/98, § 54, 17 December 2002).

23. In all the circumstances, the Court does not consider that the proceedings were pursued with the diligence required by Article 6 § 1.

There has accordingly been a violation of that provision, in that the applicant's "civil rights and obligations" were not determined within "a reasonable time".

There has accordingly been a breach of Article 6 § 1.

II APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant left the matter of pecuniary and non-pecuniary damage to the Court's discretion but stated that he and his family had suffered considerably due to shortage of funds from 1993 to 2003.

26. The Government contested the claim. They argued that even if the delays attributable to the parties to the proceedings, and in particular the applicant, were not sufficient to prevent a breach of Article 6, they were nevertheless highly relevant in assessing the question of compensation.

27. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant (the negligence of CJM) and consequently, there is no justification for making any award under this head. On the other hand, the Court accepts that the applicant has certainly suffered non-pecuniary damage, such as distress and frustration resulting from the excessive length of the proceedings, which is not sufficiently made good by the finding of a violation of the Convention. Ruling on an equitable basis, it awards him EUR 7,000.

B. Costs and expenses

28. The applicant also claimed GBP 1279 for the costs and expenses incurred before the domestic courts and GBP 100 for those incurred before the Court.

29. The Government did not contest the applicant's claim for costs and expenses before the Court but maintained that the claim of GBP 1279 for costs and expenses incurred before the domestic courts should be disregarded. They argued that costs from domestic proceedings were only recoverable if they were undertaken for the purpose of vindicating the applicant's rights whereas the amount claimed by the applicant related to the proceedings which were the subject of the application.

30. 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 and were reasonable as to quantum (see, for example, *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII). The Court considers that the sum claimed in respect of expenses incurred before the Court should be awarded in full. As to the sum claimed in respect of costs and expenses incurred before the domestic courts, the Court finds this was not concerned with seeking redress for the alleged violation of the Convention (*King v. the United Kingdom*, no. 13881/02, § 52, 16 November 2004) and accordingly makes no award in respect of this claim.

C. Default interest

31. 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 remainder of the application concerning the excessive length of the proceedings admissible;
2. *Holds* that there has been a violation of Article 6 § 1 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 7,000 (seven thousand euros) in respect of non-pecuniary damage, to be converted into pounds sterling at the rate applicable on the date of settlement;
 - (b) 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 150 (one hundred and fifty euros) in respect of expenses, to be converted into pounds sterling at the rate applicable on the date of settlement; and
 - (c) 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Fatoş ARACI
Deputy Registrar

Josep CASADEVALL
President