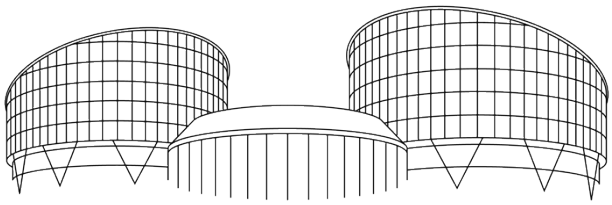

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 34108/07
Camellia SOHBY
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 18 June 2013 as a Chamber composed of:

Ineta Ziemele, President,
David Thór Björgvinsson,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano,
Paul Mahoney,
Faris Vehabović, judges,

and Françoise Elens Passos, *Section Registrar,*

Having regard to the above application lodged on 26 July 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Camellia Sohby, is a dual British and United States national, who was born in 1956 and lives in London. Her application was lodged on 26 July 2007. She was represented before the Court by Mr M. Berkin, a barrister practising in London.

2. The United Kingdom Government ("the Government") were represented successively by their Agents, Ms L. Dauban and Ms M. Addis of the Foreign and Commonwealth Office.

The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The case relates to a domestic civil claim brought by the applicant in respect of an incident that occurred in July 1995, in which the applicant claims that she was unlawfully detained and assaulted by officers of the Metropolitan Police ("the defendant"). In June 2001 the applicant was granted legal aid to pursue a claim for damages in respect of these allegations. She was initially represented by Moss & Co Solicitors ("Moss & Co").

5. The applicant's claim was issued at Central London County Court ("the CLCC") on 26 July 2001. Her particulars of claim (the document setting out the basis of her claim) were filed with the CLCC and served the defendant on 20 November 2001. On 3 January 2002 the CLCC recorded that the parties had agreed an extension of time for service of the defendant's defence to the claim to 15 January 2002. On 15 January 2002 the defence was served on the applicant, although it is not clear whether this defence was ever filed with the court. On 20 March 2003 a telephone call was received by the CLCC from the applicant's solicitors advising that they would fax the defence to the court. There is, however, no record that the defence was received or that the solicitors followed up their telephone conversation.

6. The parties agreed their own directions regarding the progress of the case (that is, the procedural timetable for the case) and, consequently, documents were disclosed and witness statements exchanged. In the meantime nothing was heard from the court. In December 2002, the applicant withdrew instructions from Moss & Co and, in January 2003, instructed Coninghams Solicitors ("Coninghams"). Transfer of legal aid funding from Moss & Co to Coninghams was confirmed on 26 February 2003.

7. On 22 August 2003 the applicant's solicitors wrote to the CLCC seeking to progress the case. On receipt of the letter the CLCC wrote to the defendant on 9 September 2003 requesting that a copy of the defence be filed with the court, which the defendant did on 15 September 2003. On 7 October 2003 an allocation questionnaire was sent to the parties. (An allocation questionnaire is a document the parties must complete and return to the court so that the court can give appropriate directions as to where, when and how the case should be heard). The applicant filed her questionnaire on 24 October 2003 and a case management conference (a conference between the court and the parties to agree procedural directions and identify the issues in the case: "a CMC") was listed for 5 January 2004. At the CMC the applicant was refused permission to rely on her own expert medical evidence, directions were given for the instruction of a single joint

expert, and a trial window was set for between 21 June 2004 and 10 September 2004. The CLCC subsequently listed the case for trial on 5 July 2004.

8. On 22 January 2004 the applicant made an application to amend her claim and an application to vacate (that is, adjourn) the trial date set for 5 July 2004. In February 2004 the applicant withdrew instructions from Coninghams. In the meantime, the CLCC duly listed her applications for hearing on 12 March 2004 and 27 May 2004 respectively but the applicant, stating that she would not be able to attend the hearing of her application as a litigant in person, did not attend on 12 March 2004 and sought an adjournment (with which the defendant agreed) of the hearing set for 27 May 2004.

9. On 29 April 2004 the applicant applied to have her application of 22 January 2004 re-considered and/or for a stay of the order of 12 March 2004. On 29 April 2004 she also applied for the trial date of 5 July 2004 to be vacated on the basis that she had to instruct new solicitors who required time to prepare her case and on the basis that she was not medically fit to represent herself. This application was listed for 27 May 2004. At some time in May 2004 the applicant instructed new solicitors, Kaim Todner, who applied for a transfer of the applicant's legal aid certificate. On 24 May 2004 the applicant applied to adjourn the hearing listed for 27 May 2004 on the ground that funding had not yet been transferred to Kaim Todner and that she was unable to represent herself. On 8 May 2004, with neither party in attendance but with the defendant's agreement, the CLCC ordered that the application be adjourned generally with permission to apply to restore. The applicant found the order confusing and thought that it meant that the trial date had been vacated.

10. On 2 July 2004 the applicant made a further application to vacate the trial date to allow her new solicitors time to prepare the case. There is no record of a response to this application. The applicant did not attend the trial on 5 July 2004. She stated that this was due to reasons of ill-health. The trial judge ordered the applicant to attend the following day. The applicant claimed that she did not receive notice of this order, although it appears that the trial judge was satisfied that it had been communicated to her by the court clerk. The applicant did not attend court on 6 July 2004 and her claim was dismissed.

11. In September 2004 the applicant withdrew instructions from Kaim Todner.

12. On 21 October 2004 the applicant applied to have her claim reinstated, arguing that the trial should have been adjourned and that she had good reasons for not attending. She failed to enclose with her application the prescribed application fee, although the applicant, in her submissions to this Court, maintains that this was because she believed she was entitled to an exemption from paying the fee. Therefore, on

4 November 2004, the CLCC returned the application to the applicant notifying her of her failure to pay the fee. The applicant paid the fee on 17 February 2005. The application was then listed and heard on 13 April 2005. The applicant was represented at the hearing of this application by counsel on a direct access basis (that is, a barrister directly instructed by a lay person without the need for that person to first instruct a solicitor). The judge held that the applicant had good reason for failing to attend the trial and re-instated her claim. A CMC was listed for 27 May 2005 but on 24 May 2005 the applicant applied for an adjournment. The defendant agreed to this request. At a hearing before the judge – attended only by the applicant – the hearing was adjourned until 29 July 2005.

13. In or around May 2005 the applicant states that she re-instructed Coninghams. It appears that Coninghams applied for a new legal aid certificate but were refused. The applicant stated that her application was "bungled" and that the Legal Service Commission ("the LSC") "lost or mysteriously returned" her papers. Two letters were sent by the LSC to the applicant. The first, dated 28 September 2005, stated that "you have provided insufficient information/documentation to enable the application to be fully considered... you may apply for review by 12 October 2005". The second, dated 26 October 2005, stated that the "file has been closed... because the application was rejected more than 90 days ago as it was not properly completed and we have not received the correctly completed application... If public funding is still required, a fresh application must be made". Coninghams offered to represent the applicant on a private client basis. However, the applicant stated that she was unable to afford their fees.

14. On 29 July 2005 the CMC was again adjourned, at the request of one or both of the parties for 9 September 2005. On 9 September 2005 a CMC was held at which no order was made as to medical evidence and a trial window was set for between 16 January 2006 and 24 February 2006. On 2 November 2005 the case was listed for trial on 13 February 2006. At the defendant's request, the trial was re-listed for 13 March 2006.

15. The applicant claimed not to have been informed of this new trial date until 10 February 2006 when she applied to have it vacated on grounds that, although she was available, her solicitor had gone on holiday without notifying her and that she could not represent herself on health grounds. The application to vacate was heard and rejected on 10 March 2006. The defendants relied at this hearing on a letter from Coninghams, dated 9 March 2006, which stated that the file handler had gone away for just one week between 23 January and 31 January and that, in any event, Coninghams were no longer instructed by the applicant.

16. The applicant instructed counsel on a direct access basis to renew on the first day of the trial her application to vacate. Counsel was not instructed in relation to the trial itself for which he had no time to prepare. The applicant did not attend the trial on 13 March 2006, again for health reasons.

The judge refused the renewed application to vacate and dismissed the applicant's claim in its entirety. He ordered that any application to set aside his judgment be made without notice in the first instance.

17. On 14 March 2006 the applicant applied to have the judgment set aside. The applicant did not pay the prescribed fee until 18 May 2006. On 26 May 2006 the applicant telephoned the CLCC to ask for her application to be listed after the second week of July 2006. The hearing was listed and took place on a without notice basis on 9 August 2006 when she was granted leave to apply on notice to the defendant.

18. The hearing was listed for 22 September 2006. On 16 August 2006 the defendant requested that the hearing be relisted as counsel was unavailable for the original date. On 25 August 2006 the CLCC agreed and requested that the parties informed the court of the dates which they wished to avoid. The defendant did so by letter dated 29 August 2006. The applicant did not and instead lodged a complaint over the decision to relist the hearing. On 7 September 2006 she applied to have the hearing date of 22 September 2006 reinstated. This application was dismissed by the CLCC on 15 September 2006.

19. On 10 October 2006 the applicant requested the CLCC not to relist the hearing until further notice. She then requested by letter dated 10 October 2006 that the CLCC list the hearing in December 2006. The CLCC sought dates to avoid from the parties and, following receipt of correspondence, listed the hearing for 14 December 2006. The defendant subsequently notified the CLCC that it was unable to attend on that date and, following further correspondence, the court required the attendance of both parties on 21 December 2006 to set a date, emphasising that once the hearing had been fixed it would not be relisted again. The case was then relisted for the first agreed date when both parties could attend, 31 January 2007.

20. The application to set aside the judgment of 13 March 2006 dismissing the applicant's claim was heard on that date. The applicant was again represented by counsel on a direct access basis. After reciting the procedural history of the case and the reasons advanced by the applicant for her absence at the 13 March 2006 trial date, the judge hearing the application concluded:

> "Taking all those matters into consideration, both the history and the discrepancies which are evident in the versions given by the [applicant] and the documentation [and] the similarity of her reliance upon the same excuses for not attending in the past strongly suggest to me that [the applicant] cannot come anywhere near satisfying this court that there were good reasons for not attending and that those reasons were genuinely honest. I am fully satisfied that they were not in relation to the trial fixed for 13 March last year".

The applicant maintains that the CLCC had lost the case file and the applicant's bundle, and that the judge should not have proceeded without them.

21. On 17 April 2007 the applicant filed an appeal notice with the High Court out of time. In that notice she claimed that an earlier notice of appeal had been filed in time on an old form, although no evidence of an application on this old form was provided. The applicant attributed the delay in appealing to those of the CLCC in obtaining the judge's signature on the relevant order (one month) and in providing a transcript of his judgment (five months). On 14 June 2007 the High Court refused permission to appeal, holding that no reasons had been given to explain the delay in issuing the appeal notice and that, in any event, the proposed appeal had no prospects of success.

COMPLAINTS

22. The applicant complained that the length of the proceedings in this case violated the "reasonable time" requirement under Article 6 § 1 of the Convention.

23. The applicant further complained under Article 6 that the court's dismissal of her claim in her absence without oral evidence amounted to the denial of a fair trial; that the court's refusal to allow her to rely on her own expert evidence and its refusal to allow amendment of the claim was unreasonable and unfair; and that the denial of legal aid in the later stages of proceedings amounted to a denial of effective access to the court.

24. Lastly, relying on Articles 3, 5 and 14 of the Convention the applicant complained that her treatment by the police in 1995, which formed the basis of her civil claim, amounted to inhuman and degrading treatment, unlawful deprivation of liberty and discrimination.

THE LAW

A. The length of the proceedings

25. Where relevant, Article 6 § 1 of the Convention provides as follows:

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

1. The parties' submissions

26. The applicant disputed that the domestic case-file record produced by the Government in their submissions to the Court was reliable. In particular, she alleged that it appeared to have been doctored, contained several deletions and was ambiguous. The applicant further disputed the Government's main contention (see paragraph 27 below) that she was responsible for the majority of delay. She accepted that she had been responsible for some of the delay as a result of her applications to have certain of the hearings in the case adjourned. However, the CLCC had been responsible for the majority of the delay and had been so in six respects. First, the CLCC had lost the defence (a fact which the counsel for the defendant in the proceedings appeared to have accepted at one stage) thus delaying the issuance of the allocation questionnaire for two years. Second, the CLCC had granted extensions to the defendant of the deadline for filing the defence, causing two months' delay. Third, the CLCC was negligent in not issuing notice of the trial date of 6 July 2004 (the applicant's solicitor had only learned of it three days before). Fourth, the CLCC caused further delay in its consideration of the application to reinstate the claim. This had caused a year of delay. Fifth, after the reinstatement of her claim, there had been a further six months' delay before the case could come to trial again. Sixth, after the claim had been dismissed for the second time on 13 March 2006, hearings to have it reinstated were vacated by the CLCC on several occasions, causing a final six months' delay.

27. The Government informed the Court that the applicant's domestic court case file record had been destroyed in accordance with standard domestic practice. However they did have access to the applicant's case file record, which had been maintained by CLCC staff. In reliance on this record, the Government submitted that the CLCC was not responsible for causing delay in the proceedings. The overall length of the proceedings was caused principally by the applicant's conduct in failing to attend court dates, delaying in making applications, and failing to abide by the court's procedural orders. It had been caused to a lesser extent by the Metropolitan Police as the defendant in the action.

28. As to the applicant's allegations that six delays had been caused by the CLCC, the Government responded as follows. First, courts could only issue the allocation questionnaire which was necessary to progress a civil case once a defence had been received and there was no support for the applicant's allegation that the CLCC had lost the Metropolitan Police's defence to the claim. When the matter was first raised with the CLCC it wrote promptly to the defendant requesting a defence and, when it was received, issued the allocation questionnaire. In any event, the parties agreed their own directions in the case and no delays in the pre-trial stage of proceedings were caused by the CLCC. Second, any further delays at the stage when the defence was to be filed had been the result of extensions to

which the parties had agreed. Third, while the applicant may only have learned of the 5 July 2004 trial date three days before, it was clear that the parties had been informed months in advance and indeed, the applicant had applied to vacate the trial date. Fourth, although it had taken approximately one year (from July 2004 to April 2005) to have the claim reinstated, the applicant had not applied for it to be reinstated until October 2004 and she did not pay the necessary fee until February 2005. Fifth, although the trial date of 13 February 2006 had been adjourned and the claim dismissed on the new date of 13 March 2006, this had been at the request of the defence. A new date had been set promptly. In this respect, the Government referred to the court's judgment of 31 January 2007 (see paragraph 20 above) which had referred to the applicant's history of non-attendance and had concluded that the applicant had not come anywhere near satisfying the court that there were good reasons not for attending and that those reasons were genuinely honest. Sixth, as regards the application to set aside the order of 13 March 2006, the delays in hearing the application had been caused by the parties whereas the CLCC had actively managed the delay by calling the parties to a hearing on 21 December 2007 and warning them that no further requests for adjournments would be allowed.

2. The Court's assessment

29. The parties did not dispute that the proceedings before the CLCC involved the determination of the applicant's civil rights and thus that Article 6 § 1 applies. The Court agrees (see, for instance, *Krastanov v. Bulgaria*, no. 50222/99, 30 September 2004 and *Caloc v. France*, no. 33951/96, ECHR 2000-IX).

30. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants (see, among many authorities, *Minshall v. the United Kingdom*, no. 7350/06, § 45, 20 December 2011; *Krastanov*, cited above, § 68; *Caloc*, cited above, § 118).

31. The domestic proceedings in this case commenced on 26 July 2001 when the CLCC issued the applicant's claim and concluded on 14 June 2007 when the Court of Appeal refused the applicant permission to appeal against the decision to strike out her claim. They therefore lasted nearly 5 years and 11 months.

32. This was a long period of time for a case which should have been so relatively straightforward. However, in the Court's view, the applicant caused the majority of the delay. Among her actions which contributed to the lengthening of the proceedings were:

- her failure to actively pursue her claim in the months following its issue, including her failure either to find out whether a defence had been lodged or to seek default judgment;

- her failure to attend the first trial date fixed for 5 July 2004;

- her delay until 21 October 2004 in making her application to set aside the judgment of 6 July 2004, and her failure to pay the necessary application fee before February 2005 application fee;

- her request for an adjournment of the CMC listed for 27 May 2005;

- her failure to attend on the second trial date fixed for 13 March 2006 without, as the court found, any genuine or honest reason for not attending;

- the delay in having 13 March 2006 order set aside arising from her failure to pay the prescribed fee until 18 May 2006 and from her request that the hearing be listed after the second week in July 2006;

- the delay to the re-listing of the hearing of 22 September 2006 by her failure to send in dates to avoid, her request on 10 October 2006 not to re-list the hearing until further notice, and her request that the hearing be listed for December 2006; and

- her delay in appealing against the judgment of 31 January 2007 until 17 April 2007 when she issued a notice of appeal out of time without, as the High Court found, any good reason.

33. Moreover, while the Court accepts that the defendant in the case was responsible for some delay, including the applications to adjourn the hearings listed for 13 February 2006, 22 September 2006 and 14 December 2006, it considers that the CLCC acted properly and fairly in considering and granting these requests and notes that, in each instance, the resultant delay was relatively slight. The trial date of 13 February 2006 was re-listed for 13 March 2006. Those of 22 September 2006 and 14 December 2006 were re-listed for 31 January 2007 (after the applicant had requested first, that it not be re-listed until further notice and second, that it be re-listed for December 2006).

34. As for the applicant's submission that six periods of delay could be attributed to the CLCC itself, the Court finds the Government's explanations in respect of each of these six periods to be full and convincing. As the Government have observed, there is no evidence to support the applicant's allegation that the CLCC lost the defence or that it

failed to notify the parties of the 5 July 2004 trial date, especially when the applicant herself applied to have that trial date vacated. By the same token, the Court is satisfied that the CLCC acted promptly throughout when required to take procedural decisions regarding the applicant's civil action. Indeed, it appears that every effort was made to accommodate the applicant, particularly in the latter stages of proceedings as she sought to have her claim reinstated. This is not therefore a case where, despite the majority of the delay being attributable to the parties, the domestic courts nonetheless bear some responsibility because of their failure to take an active role in the management of proceedings (compare the present case with, for instance, *Richard Anderson v. the United Kingdom*, no. 19859/04, § 28, 9 February 2010; and *Bhandari v. the United Kingdom*, no. 42341/04, § 22, 2 October 2007). Finally, the Court rejects the applicant's suggestion that the records in her case have been doctored either accidentally or to absolve the CLCC of responsibility for the delays in the case: this allegation is simply not borne out by the evidence contained in the case file.

35. Therefore, for reasons given above, the Court concludes that the domestic proceedings did not exceed the reasonable time requirement in Article 6 § 1. Accordingly, the applicant's complaint under this head, is therefore manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

B. The fairness of the proceedings

36. The applicant further complains that the proceedings were unfair because her claim was summarily dismissed by the CLCC. She alleges that this was contrary to Article 6 § 1 of the Convention, which, where relevant, provides:

> "In the determination of his civil rights..., everyone is entitled to a fair... hearing...."

37. It is not the task of this Court to act as an appeal court of "fourth instance" by calling into question the outcome of the domestic proceedings (see, amongst many authorities, *Minshall v. the United Kingdom*, cited above § 58). In other words, this Court cannot question the assessment of the domestic authorities unless there is clear evidence of arbitrariness (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 89, ECHR 2007-I). In the instant case, it was the applicant's failure to attend the hearing that ultimately led to the strike out of her claim on 31 January 2007. Following the hearing of her application to reinstate her claim on 31 January 2007 the CLCC found that there was no good reason for the applicant's previous non-attendance. No evidence has been provided to the Court to suggest that that decision was arbitrary. To the extent that the applicant also complained of a number of case-management decisions in the case, such as the refusal of the CLCC to permit her to instruct her own expert witness, as

opposed to a single joint expert being instructed, there is similarly no reason to suggest that these decisions were arbitrary.

38. Consequently, these complaints under Article 6 § 1 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

39. In respect of the applicant's discrete complaint about her inability to access legal aid in the latter stages of the proceedings, on the basis of the evidence submitted by the applicant, it is not clear that the applicant properly pursued an application to the LSC for legal aid. Accordingly, she has not exhausted domestic remedies in respect of this complaint and it must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. The applicant's remaining complaints

40. Finally, the applicant submitted that her treatment by the police in 1995, which formed the basis of her civil claim, gave rise to violations of Articles 3, 5 and 14 of the Convention.

41. The crux of the rule on exhaustion of domestic remedies is that the complaint or complaints intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements and time limits down in domestic law (*Cardot v. France*, 19 March 1991, § 34, Series A no. 200). Cases may be rejected for non-exhaustion where the applicant has clearly sought to exhaust a remedy but through his or her own negligence failed to observe the requirements of domestic law (*Agbovi v. Germany* (dec.), no. 71759/01, 25 September 2006). This includes, for example, failure to observe time limits (*Ugilt Hansen v. Denmark* (dec.), no. 11968/04, 26 June 2006) and to pay court fees (*Reuther v. Germany* (dec.), no. 74789/01, ECHR 2003-IX).

42. The applicant was not able to raise her claims in respect of Articles 3, 5 and 14 at the domestic level because of the CLCC's decision to the strike out of her claim. This was done because of the applicant's own failure to attend the hearing set down by the CLCC and otherwise to observe the procedural requirements governing the bringing of a civil claim in the domestic courts. This is a case, therefore, where the applicant has sought exhaust an otherwise effective remedy but, through her negligence she has failed to observe the requirements of domestic law. In accordance, therefore, with the settled case-law of the Court set out in the preceding paragraph, these complaints are inadmissible for failure to exhaust domestic remedies and must rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos Registrar	Ineta Ziemele President