

July 2013

Allen v. the United Kingdom [GC] - 25424/09

Judgment 12.7.2013 [GC]

Article 6

Article 6-2

Presumption of innocence

Refusal of compensation following reversal of applicant's conviction of criminal offence: *no violation*

Facts – In September 2000 the applicant was convicted of the manslaughter of her baby son on the basis of medical evidence that the boy's injuries were consistent with "shaken baby syndrome" (also known as "non-accidental head injury" – "NAHI"). On appeal she claimed that new medical evidence suggested that the injuries could be attributed to a cause other than NAHI. In July 2005 the Court of Appeal (Criminal Division) ("CACD") quashed her conviction on the grounds that it was unsafe after finding that the new evidence might have affected the jury's decision to convict. The prosecution did not apply for a re-trial given that the applicant had already served her sentence and a considerable amount of time had passed.

The applicant lodged a claim with the Secretary of State under section 133 of the Criminal Justice Act 1988 ("the 1988 Act"), which provides that compensation shall be paid to someone who was convicted of a criminal offence but has subsequently had that conviction reversed on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice. Her claim was refused. An application for judicial review of that decision was dismissed by the High Court, which concluded that the CACD had only decided that the new evidence, when taken with the evidence given at trial, "created the possibility" that a jury "might properly acquit" the applicant. The Court of Appeal subsequently dismissed an appeal by the applicant after noting that the acquittal decision did "not begin to carry the implication" that there was no case for her to answer, so that the test for a "miscarriage of justice" had not been made out.

In her application to the European Court, the applicant alleged that the reasons given in the decision not to award her compensation had violated her right to be presumed innocent.

Law – Article 6 § 2

(a) *Scope of the case* – The question before the Court was not whether the refusal of compensation *per se* violated the applicant's right to be presumed innocent (Article 6 § 2 did not guarantee a person acquitted of a criminal offence a right to compensation for a miscarriage of justice), but whether the individual decision refusing compensation in the applicant's case, including the reasoning and the language used, was compatible with the presumption of innocence.

(b) *Applicability* – There were two aspects to Article 6 § 2. The first imposed certain procedural requirements in the context of the criminal trial itself (for example relating to the burden of proof, presumptions of fact and law and the privilege against self-incrimination). The second, which was the one relevant in the applicant’s case, was aimed at protecting individuals who had been acquitted of a criminal charge, or in respect of whom criminal proceedings had been discontinued, from being treated by public officials and authorities as though they were in fact guilty. Where criminal proceedings had concluded, an applicant seeking to rely on Article 6 § 2 in subsequent proceedings would have to show that there was a link between the two sets of proceedings. Such a link was likely to be present, for example, where the subsequent proceedings required examination of the outcome of the prior criminal proceedings and, in particular, where they obliged the court to analyse the criminal judgment, to engage in a review or evaluation of the evidence in the criminal file, to assess the applicant’s participation in some or all of the events leading to the criminal charge, or to comment on the subsisting indications of the applicant’s possible guilt. The necessary link was present in the instant case because the right to commence compensation proceedings was triggered by the acquittal in the criminal proceedings, and because the Secretary of State and the courts had had to have regard to the judgment in the criminal proceedings when making and reviewing the decision on compensation. Article 6 § 2 was therefore applicable.

Conclusion: preliminary objection dismissed (unanimously).

(c) *Merits* – There was no single approach to ascertaining the circumstances in which Article 6 § 2 would be violated in the context of proceedings which followed the conclusion of criminal proceedings. Much depended on the nature and context of the proceedings in which the impugned decision was adopted. However, in all cases and no matter what the approach applied, the language used by the decision-maker was of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2.

Turning to examine the nature and context of the proceedings in the applicant’s case, the Court noted that the applicant’s acquittal was not an acquittal “on the merits” in a true sense. Although formally an acquittal, the termination of the criminal proceedings in her case shared more of the features present in a case in which criminal proceedings had been discontinued.

It further noted that specific criteria had to be met under section 133 of the 1988 Act for the right to compensation to arise, namely: the claimant had to have been convicted, she had to have suffered punishment as a result, an appeal had to have been allowed out of time, and the ground for allowing the appeal had to have been that a new fact showed beyond reasonable doubt that there had been a miscarriage of justice. Those criteria reflected, with only minor linguistic changes, the provisions of Article 3 of Protocol No. 7 to the Convention, which had to be capable of being read in a manner which was compatible with Article 6 § 2. Nothing in those criteria called into question the innocence of an acquitted person and the legislation itself did not require criminal guilt to be assessed.

As to the language used by the domestic courts, the Court did not consider that, when viewed in the context of the exercise which they had been required to undertake under section 133 of the 1988 Act, it had undermined the applicant’s acquittal or treated her in a manner inconsistent with her innocence. In assessing whether a “miscarriage of justice” had arisen, the domestic courts had not commented on whether, on the basis of the evidence as it stood at the appeal, the applicant should be, or would likely be, acquitted or convicted. Equally, they had not commented on whether the evidence was indicative of her guilt or

innocence. Indeed, they had consistently repeated that it would have been for a jury to assess the new evidence, had a retrial been ordered.

Moreover, under the law of criminal procedure in England it was for a jury in a criminal trial on indictment to assess the prosecution evidence and to determine the guilt of the accused. The CACD's role in the applicant's case was to decide whether the conviction had been "unsafe", not to substitute itself for the jury in deciding whether, on the basis of the evidence now available, her guilt had been established beyond reasonable doubt. The decision not to order a retrial had spared the applicant the stress and anxiety of undergoing another criminal trial and she had not argued that there ought to have been a re-trial. Both the High Court and the Court of Appeal had referred extensively to the judgment of the CACD to determine whether a miscarriage of justice had arisen and did not seek to reach any autonomous conclusions on the outcome of the case. They had not questioned the CACD's conclusion that the conviction was unsafe and had not suggested that the CACD had erred in its assessment of the evidence before it. They had accepted at face value the findings of the CACD and drawn on them, without any modification or re-evaluation, in order to decide whether the section 133 criteria had been satisfied.

Conclusion: no violation (unanimously).

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