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

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Rejection of claims for compensation for miscarriage of justice did not breach the European Convention

In today's **Grand Chamber** judgment[1] in the case of Nealon and Hallam v. the United Kingdom (applications nos. 32483/19 and 35049/19) the European Court of Human Rights held, by a majority of 12 votes to 5, that there had been:

no violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights.

The case concerned the rejection of the applicants' claims for compensation for a miscarriage of justice after their convictions had been quashed when new evidence had undermined the cases against them.

The statutory scheme for compensation for miscarriages of justice in the Criminal Justice Act 1988, as amended by the Anti-Social Behaviour, Crime and Policing Act 2014, provided for compensation for a miscarriage of justice only where a new or newly discovered fact showed beyond reasonable doubt that the person concerned had not committed the offence. The applicants argued that the statutory scheme was incompatible with Article 6 § 2 because it required them to "prove" their "innocence" in order to be eligible for compensation.

In its case-law the Court has acknowledged a second aspect to Article 6 § 2, which comes into play after criminal proceedings have concluded in order to protect formerly accused persons who have been acquitted, or in respect of whom criminal proceedings were discontinued, from being treated by public officials and authorities as though they are in fact guilty. Those persons are innocent in the eyes of the law and must be treated as such.

In this case, the Court confirmed that Article 6 § 2 of the Convention was applicable in this second aspect. Furthermore, following a review of its case-law on this issue, the Court considered that in all such cases, regardless of the nature of the subsequent proceedings, and regardless of whether the criminal proceedings had ended in an acquittal or a discontinuance, the question for the Court to consider was whether the decisions and reasoning of the domestic courts or other authorities in the subsequent proceedings, when considered as a whole, and in the context of the exercise which they were required by domestic law to undertake, amounted to the imputation of criminal liability to the applicant. To impute criminal liability to a person was to reflect an opinion that he or she was guilty to the criminal standard of the commission of a criminal offence.

The Court noted that the test in section 133(1ZA) of the amended 1988 Act required the Justice Secretary, in the context of a confidential civil and administrative procedure, to comment only on whether the new or newly discovered fact showed beyond reasonable doubt that the applicant had not committed the offence in question. The refusal of compensation by the Justice Secretary did not, therefore, impute criminal guilt to the applicants by reflecting the opinion that they were guilty to the criminal standard of committing the criminal offences, nor did it suggest that the criminal proceedings should have been determined differently. Finding that it could not be shown beyond reasonable doubt that an applicant had not committed an offence – by reference to a new or newly discovered fact or otherwise – was not tantamount to finding that he or she had committed the

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

offence. Therefore, it could not be said that the refusal of compensation by the Justice Secretary attributed criminal guilt to the applicants.

The Court concluded that the refusal of the applicants' claims for compensation under section 133(1ZA) of the 1988 Act had not breached the presumption of innocence in its second aspect.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants are Victor Nealon, an Irish national who was born in 1960, and Sam Hallam, a British national who was born in 1987. They currently reside in the United Kingdom.

Mr Nealon was convicted in 1997 of attempted rape and given a sentence of life imprisonment with a minimum term of seven years. In 2013 his conviction was quashed after further analysis of the clothes the victim was wearing on the night of the attack revealed DNA of an unknown male. He served a total of 17 years and three months of his sentence.

Mr Hallam was convicted of murder, conspiracy to commit grievous bodily harm and violent disorder in 2004. His convictions were quashed after new evidence came to light casting doubt on some of the evidence that had formed part of the case against him. He served seven years and seven months.

Both applicants subsequently applied for compensation for a miscarriage of justice. Their applications for compensation were considered under the new section 133(1ZA) of the Criminal Justice Act 1998, the act having been amended following the Grand Chamber judgment *Allen v. the United Kingdom* (no. 25424/09). The Criminal Justice Act 1988 provided for compensation where a new or newly discovered fact showed beyond reasonable doubt that there had been a miscarriage of justice. Prior to the insertion of section 133(1ZA), the meaning of "miscarriage of justice" had not been settled by the national courts, which meant that there had been no statutory definition. Under the new section, there would be a miscarriage of justice if and only if a new or newly discovered fact showed beyond reasonable doubt that the person had not committed the offences. Mr Nealon's and Mr Hallam's cases failed to pass that test and their applications for compensation were rejected.

Both applicants sought judicial review of the Ministry of Justice's decisions. They argued that the statutory test for compensation was incompatible with Article 6 § 2 (presumption of innocence) because it required them to "prove" their "innocence" in order to be eligible for compensation. They therefore sought a declaration of incompatibility pursuant to section 4 of the Human Rights Act 1998.

Mr Nealon's and Mr Hallam's applications for judicial review were rejected and their appeals were dismissed as the national courts held that section 133(1ZA) of the Criminal Justice Act 1988 was not incompatible with Article 6 § 2 of the Convention.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 14 and 25 June 2019.

Relying on Article 6 § 2 (presumption of innocence) of the European Convention of Human Rights, the applicants complained that the rejection of their claims for compensation for a miscarriage of justice on the basis of the test in section 133(1ZA) of the Criminal Justice Act 1988 had breached their right to be presumed innocent.

On 14 May 2020 the British Government was given notice[2] of the applications, with questions from the Court.

The Chamber to which the cases had been allocated relinquished jurisdiction in favour of the Grand Chamber on 28 February 2023.

The following persons and /or organisations were granted leave to intervene in the written proceedings as third parties: JUSTICE, and the Northern Ireland Human Rights Commission.

A public hearing was held on 5 July 2023.

In view of the similar subject matter of the applications, the Court decided to examine them jointly in a single judgment.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Arnfinn **Bårdsen** (Norway),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Tim **Eicke** (the United Kingdom),
Péter **Paczolay** (Hungary),
Lado **Chanturia** (Georgia),
Ivana **Jelić** (Montenegro),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Saadet **Yüksel** (Türkiye),
Mykola **Gnatovskyy** (Ukraine),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

Decision of the Court

The Court reiterated that Article 6 § 2 safeguards the right to be "presumed innocent until proved guilty according to law" and acts as a procedural guarantee in the context of a criminal trial. Over time, however, the Court has developed a "second aspect", which comes into play after criminal proceedings have concluded in order to protect formerly accused persons who have been acquitted, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty. Those persons are innocent in the eyes of the law and must be treated as such.

The Grand Chamber confirmed that the second aspect of Article 6 § 2 was applicable to this case.

Furthermore, following a review of its case-law on this issue, the Court considered that in all such cases, regardless of the nature of the subsequent proceedings, and regardless of whether the criminal proceedings had ended in an acquittal or a discontinuance, the question for the Court to consider was whether the decisions and reasoning of the domestic courts or other authorities in the

2. In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure"). Further information about the procedure after a case is communicated to a Government can be found in the Rules of Court.

subsequent proceedings, when considered as a whole, and in the context of the exercise which they were required by domestic law to undertake, amounted to the imputation of criminal liability to the applicant. To impute criminal liability to a person was to reflect an opinion that he or she was guilty to the criminal standard of the commission of a criminal offence.

In reaching this conclusion, the Grand Chamber did not consider it necessary or desirable to maintain the distinction between acquittals and discontinuances which had been developed in cases concerning costs issues and claims for compensation by former accused, and which afforded a higher level of protection under Article 6 § 2 of the Convention to persons who had been acquitted. While at first glance a discontinuance might not appear to have the same exonerating effect as an acquittal, on closer inspection the reality was less clear cut.

Under the new section 133(1ZA) of the 1988 Act it fell to the Justice Secretary to decide whether the new or newly discovered fact, which resulted in the quashing of the conviction, showed beyond reasonable doubt that the person had not committed the offence. The question for the Court to answer was whether the refusal of compensation attributed criminal liability to the applicants.

The Court noted that the test in section 133(1ZA) of the 1988 Act required the Justice Secretary, in the context of a confidential civil and administrative procedure, to comment not on the basis of the evidence as it had stood at the appeal whether an applicant should be, or would likely be, acquitted or convicted or on whether the evidence had been indicative of the applicant's guilt or innocence, but only on whether the new or newly discovered fact had showed beyond reasonable doubt that the applicant had not committed the offence in question. Therefore, it could not be said that the refusal of compensation by the Justice Secretary had attributed criminal guilt to the present applicants by reflecting the opinion that they had been guilty of committing the criminal offences in question, nor did it suggest that the criminal proceedings should have been determined differently. To find that it could not be shown to the very high standard of proof of beyond reasonable doubt that an applicant had not committed an offence – by reference to a new or newly discovered fact or otherwise – was not tantamount to finding that he or she had committed the offence.

In this connection the Court emphasised that, in its second aspect, Article 6 § 2 of the Convention protected innocence in the eyes of the law and not a presumption of factual innocence as suggested by the applicants. The Justice Secretary was not required by section 133(1ZA) to comment on an applicant's innocence in the eyes of the law, and the refusal of an application for compensation under that section was not inconsistent with the applicant's continuing innocence in this legal sense.

The Court concluded that the refusal of the applicants' claims for compensation under section 133(1ZA) of the 1988 Act had not breached the presumption of innocence in its second aspect.

In doing so, it reiterated that Article 6 § 2 of the Convention did not guarantee a person whose criminal conviction had been quashed a right to compensation for a miscarriage of justice. The United Kingdom had been free to decide how "miscarriage of justice" should be defined, and to draw a legitimate policy line as to who out of the wider class of people who had had their convictions quashed on appeal should be eligible for compensation, so long as the refusal of compensation did not, in and of itself, impute criminal guilt to an unsuccessful applicant.

Finally, the Court indicated that it was not insensitive to the potentially devastating impact of a wrongful conviction. However, its role was solely to determine whether there had been a breach of Article 6 § 2 of the Convention on the facts of the two cases before it due to the operation of a compensation scheme established nationally which was clearly conceived and operated in restrictive terms. It held that this was not the case. There had accordingly been no violation of Article 6 § 2 of the Convention.

Separate opinion

Judges Bošnjak, Chanturia, Felici, Ravarani and Yüksel expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available in English and French.

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