CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 12141/04
by Neil Fraser LATIMER
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 31 May 2005 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,

and Ms F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 18 March 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Neil Fraser Latimer, is a British national who was born in 1962 and lives in Armagh. He is represented before the Court by Mr John J. Rice, a solicitor practising in Belfast.

A. The circumstances of the case

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

On 1 July 1986, the applicant, a former member of the Ulster Defence Regiment (UDR) was convicted, along with three others, of the murder of Adrian Carroll who was killed on 8 November 1983.

The applicant had been arrested on 29 November 1983 and detained in Castlereagh Holding Centre for seven days. He made admissions on 29 November 1983 but retracted them on 30 November 1983. He made further admissions on 2 December 1983. At the conclusion of the seven day period, he obtained access to his solicitor for the first time. He retracted his confession again. At his trial, the Crown case comprised his confession evidence, the evidence of Mrs Dunne and the evidence of Mrs A. Mrs Dunne gave evidence that she had seen the gunman and described him *inter alia* as wearing a tartan cap and gold rim glasses, with a light moustache. She said that it was not the applicant, whom she knew as a neighbour. Mrs A. stated that she had seen the applicant, unusually wearing a tartan cap and gold rim glasses, getting into a UDR Land Rover with two soldiers shortly before the time of the shooting. The applicant challenged the admissibility of his confession evidence. The trial judge found that the confession statements were made freely and voluntarily and that the content came from himself.

On 4 May 1988, the Court of Appeal in Northern Ireland rejected the appeals of the applicant and his co-defendants, agreeing that the confessions had been properly admitted and were reliable accounts of their complicity.

On 25 July 1991, the Secretary of State referred the case back to the Court of Appeal, in particular in view of the availability of ESDA (electrostatic detection apparatus) readings which showed that the police notes of interviews had been rewritten in 18 places and accordingly were not contemporaneous as claimed at trial

On 29 July 1992, the Court of Appeal allowed the appeal of the applicant's co-defendants but dismissed his appeal. It was satisfied from evidence other than that of the officers that the applicant had not made admissions because of threats, promises or improper pressure. It considered

in detail the course of the interviews and the evidence of Mrs A. and Mrs Dunne and concluded that it remained satisfied beyond reasonable doubt that Mrs A.'s evidence was true, that Mrs Dunne was wrong in her assertion that the gunman whom she saw was not the applicant, that his initial detailed and elaborate account of the shooting had been clearly designed to protect the other members of the UDR patrol and that his second written confession on the night of 2-3 December 1983 was a "truthful confession made by a man who realised the game was up" when confronted with confirmation of witness evidence that he had been seen getting into a landrover in civilian clothes.

In 1998, the applicant was released from custody.

On 9 May 2001, the Criminal Cases Review Commission referred the applicant's case back to the Court of Appeal, on the basis of their concerns about a report that the applicant had unusual personality characteristics making him psychologically vulnerable during detention and interrogation; and fresh evidence that witness A. had a psychiatric history.

On 9 February 2004, after hearing various expert witnesses on the applicant's personality and Mrs A.'s psychological make-up, the Court of Appeal rejected the applicant's appeal. It reviewed the evidence about Mrs A.'s psychological make-up by three consultants based on their examination of her medical records (she had died two years previously) and noted that she had been admitted to hospital twice in 1964-1965 for periods of several weeks against a background, *inter alia*, of depression and feelings of persecution. It considered that the judge, if faced by the conflicting opinions as to the relevance of this evidence on her reliability as a witness, would have recognised the need for more caution in accepting her evidence as reliable than in the case of most witnesses. However, in light of the circumstances before and at trial, it still did not find her evidence was the product of a desire to seek attention or that she had invented the whole incident in which she recognised the applicant, a person she had known quite well as they had worked together in a factory for a year.

As concerned the psychological evidence concerning the applicant, it reviewed the evidence of Dr Gudjonsson for the applicant and Dr Heap for the DPP. It concluded that the assessment by Dr Gudjonsson concerning his suggestibility and vulnerability was not supported by the applicant's conduct during the interviews and trial, in particular the course of the interviews, his acceptance at the trial of the confessions and other statements which the police said he made to them and his alleged reasons and explanations for making them.

Finally, concerning a submission that there had been a violation of Article 6 §§ 1 and 3(c) as regarded denial of access to a solicitor during his interrogation period, the Court of Appeal observed that the Human Rights Act 1998 did not apply retrospectively to convictions before it came into force. While Dr Gudjonsson's report set out the applicant's claims that he

had asked repeatedly to see a solicitor but that this was refused until he left Castlereagh for prison, the Court of Appeal noted that there was no mention of any requests in the custody records and he had not given evidence at trial that he had requested to see a solicitor.

COMPLAINTS

The applicant complains under Article 6 §§ 1 and 3(c) that he was convicted on the basis of admissions made while detained by the police in Castlereagh. In particular he made incriminating statements having been detained seven days without the benefit of legal advice. The regime at Castlereagh was designed expressly to break his will to maintain his privilege against self-incrimination with reference to, for example, the physical conditions (lack of access to daylight or natural ventilation, the cramped cells of 6 metres square, lack of exercise or access to reading or writing material etc) which have been criticised by the Committee for the Prevention of Torture; he was kept incommunicado and virtual solitary confinement; the intensive nature of the interrogation by teams of experts; and his own personality characteristics.

THE LAW

The applicant complains that he was convicted on the basis of admissions made while detained in Castlereagh and during seven days' detention without access to a solicitor. He invokes Article 6 §§1 and 3(c) which provide as relevant:

> "1. In the determination of ...of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights: ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;"

The Court observes, first of all, the applicant's complaints relate to the interrogation before his trial in 1983 and that the normal appeals concerning those proceedings concluded in 1988, considerably more than six months before the introduction of this application. While the exceptional procedure which involved a third re-examination of the case by the Court of Appeal in

February 2004 may be regarded as falling within the scope of Article 6 § 1 as concerning the determination of a criminal charge, this does not have the effect rendering inapplicable the provisions of Article 35 §1 to the original trial and appeal and the Court's examination can in principle only concern whether this latest re-opening complied with the Article 6 § 1 of the Convention. Nonetheless, since the Court of Appeal was examining allegations about the pre-trial period and reviewing the procedure as a whole the Court has, for the purposes of this application, taken the same approach.

The Court recalls that, even if the primary purpose of Article 6, as far as criminal matters are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 – may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (see *Imbrioscia v. Switzerland* judgment of 24 November 1993, Series A no. 275, § 36; *Magee v. the United Kingdom*, no. 28135/95, ECHR 2000-VI, § 41). The manner in which Article 6 §§ 1 and 3 (c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case. In its *John Murray* judgment (*John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, § 63) the Court also observed that, although Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation, this right, which is not explicitly set out in the Convention, may be subject to restriction for good cause. The question, in each case, is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing.

In the present case, the Court observes that there is no evidence that the applicant requested to see a solicitor, beyond Dr Gudjonsson's report in which he states that the applicant told him that he had repeatedly asked to see a solicitor. The Court of Appeal in reviewing this complaint noted that there was no mention of any such request in the custody records as would be expected and that during his trial the applicant did not refer in his evidence to any alleged refusal of access to a solicitor. In their observations, the Court would also note that the applicant's representatives make no direct assertion and give no details, of any refusal of access, merely referring to Dr Gudjonsson's report.

In these circumstances, the Court is not satisfied that the applicant has shown that he was prevented from consulting a solicitor during his detention at Castlereagh. Nor is it the case that any inferences were drawn from any silence by the applicant during this detention period as was the case in *John Murray* (cited above; see also *Averill v. the United Kingdom*, no. 36408/97, § 58, ECHR 2000-VI). The essence of the applicant's complaints is rather

that he made incriminating statements while being held in an environment which was deliberately designed to be coercive and to exert psychological pressure and that these admissions were used in evidence against him (see *Magee,* cited above, §35).

The Court recalls that the rules on admissibility and the assessment of evidence are principally matters for domestic courts to determine. It is not, as a general rule, for the Court to substitute its own assessment of the evidence made by a domestic court, save in circumstances where the domestic court's assessment was arbitrary or capricious, or the system of guarantees or safeguards which applied in the assessment of the reliability of confession evidence was manifestly inadequate (see *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, § 34). The Court has therefore had regard to the safeguards which were in place in the present case to test the fairness of admitting the confession statements taken from the applicant.

The admissibility, and reliability, of the confessions which the applicant made during his interrogations in Castlereagh, were scrutinised on several occasions in full adversarial proceedings, before the trial judge and on three occasions by the Court of Appeal, after hearings at which the applicant was represented and allowed to call evidence. On the latter two occasions, after examining new evidence, including psychological reports, the court found, having regard to the applicant's conduct during the interviews, that there was no doubt as to the voluntariness of his admissions. In particular, they were not convinced that the applicant was of such vulnerability or had been subject to such pressure during his detention, as would render unfair the reliance on the admissions. There is no material before this Court which would justify reaching any other conclusion (see, similarly, *Harpur v. the United Kingdom*, no. 33222/96, (dec.) 14 September 1999, unreported).

Consequently, notwithstanding the subsequent criticism made of the Castlereagh Holding Centre in the report of the Committee for the Prevention of Torture on its visit some ten years later in July 1993, the Court finds no indication in the present case that the applicant did not receive a fair trial as required by Article 6 § 1 in conjunction with Article 6 § 3(c).

It follows that the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Josep CASADEVALL
President