



Grand Chamber to examine cases concerning refusal of compensation following unsafe convictions

The Chamber of the European Court of Human Rights to which the cases **Nealon v. the United Kingdom** and **Hallam v. the United Kingdom** (application nos. 32483/19 and 35049/19) had been allocated has **relinquished jurisdiction in favour of the Grand Chamber of the Court**¹.

The applications concern the refusal to compensate the applicants for wrongful conviction. The two applicants, Victor Nealon and Sam Hallam, had their convictions quashed after those convictions had been found to be unsafe. Their subsequent applications for compensation for wrongful conviction were refused on the basis that a new or newly discovered fact did not show beyond reasonable doubt that they had not committed the offences (this being the statutory test for a “miscarriage of justice” applicable at the relevant time).

A legal summary of these cases 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. Their applications before the Court concern the statutory scheme for compensation for wrongful conviction in the Criminal Justice Act 1988.

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.

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.

Both applicants subsequently applied for compensation for wrongful conviction.

In 2013 the Grand Chamber considered a complaint by an applicant who, following her acquittal, had been refused compensation for wrongful conviction under section 133(1) of the Criminal Justice Act 1988 (*Allen v. the United Kingdom* (no. 25424/09)). At that time, section 133(1) of 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. There was no statutory definition of miscarriage of justice. The applicant had argued that the refusal of compensation violated her rights under Article 6 § 2 of the European Convention on Human Rights (the presumption of innocence). The Grand Chamber considered that Article 6 § 2 was applicable to the facts of the case, but found that there had been no violation of that Article since the judgments of the High Court and the Court of Appeal had not demonstrated a lack of respect for the presumption of innocence which the applicant had enjoyed in respect of the criminal charge of which she had been acquitted.

Following the Grand Chamber judgment in *Allen*, the Criminal Justice Act 1988 was amended, with the new section 133(1ZA) providing for compensation for wrongful conviction only where a new or

¹ Under Article 30 of the European Convention of Human Rights “Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber.”

newly discovered fact showed beyond reasonable doubt that the applicant had not committed the offence.

Mr Nealon and Mr Hallam's applications for compensation fell to be considered under the new section 133(1ZA). Both applications were rejected by the Ministry of Justice because their cases failed to meet the statutory test for compensation in that section – that is to say a new or newly discovered fact did not show beyond reasonable doubt that they had not committed the offences. The decision letters sent to both applicants stated that nothing in them was “intended to undermine, qualify or cast doubt upon [their] conviction”.

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 (the 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 domestic courts held that – notwithstanding what the Grand Chamber had said in *Allen* – Article 6 § 2 (presumption of innocence) had no bearing on a decision for compensation under section 133(1ZA) of the Criminal Justice Act 1988. A subsequent appeal by the applicants to the Supreme Court was dismissed in January 2019. That court also held, by a majority, that Article 6 § 2 (presumption of innocence) was not applicable to a decision for compensation under section 133(1ZA) of the Criminal Justice Act 1988.

Complaints and procedure

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

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

On 14 May 2020 the British Government was given [notice²](#) 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.

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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.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.