CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34979/97
by Michael Joseph WALKER
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 25 January 2000 as a Chamber composed of

Mr J.-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, *judges*,

and Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 18 October 1996 by Michael Joseph Walker against the United Kingdom and registered on 18 February 1997 under file no. 34979/97;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the letter submitted by the respondent Government on 26 October 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1957 and currently resident in Stansted, England. Before the Court he is represented by Ms. Nicola Rogers, legal adviser at the Aire Centre, London.

Particular circumstances of the case

The facts of the case, as submitted by the applicant and not contested by the respondent Government, may be summarised as follows.

On 11 February 1994 the applicant was convicted at Saffron Walden Magistrates' Court of threatening behaviour likely to cause harassment, alarm or distress, contrary to section 5 of the Public Order Act 1986. He was fined £50.

The applicant appealed. His appeal was heard on 28 April 1994 at the Chelmsford Crown Court by a judge and two lay justices. The appeal was dismissed, and the court adjourned the sentence for full psychiatric and medical reports for 28 days. The court remanded the applicant in custody for that period, without considering whether to grant bail. It appears that the conditions for remanding the applicant in custody under the Bail Act 1976 were not satisfied, and that the applicant was entitled to bail.

Prior to remanding the applicant in custody, the judge enumerated the applicant's previous convictions. The applicant had been conditionally discharged for two years after one of these. The applicant admitted being in breach of the conditional discharge. No action was taken in respect of this breach either by the Magistrates' Court or by the Crown Court.

On 27 May 1994 the applicant appeared before the same judge. The psychiatric report revealed nothing material and the judge purported to pass a sentence of 28 days' imprisonment retrospectively. Defence counsel pointed out that the offence under section 5 was not punishable by imprisonment. The judge then imposed a conditional discharge for 12 months (in substitution for the previous sentence).

In a letter to the Criminal Appeal Office dated 7 December 1995, the Crown Prosecution Service stated that, in their view, the learned judge had indeed erred and counsel for the respondent had regrettably failed in his duty to assist the learned judge. The applicant was granted legal aid to make an application to the High Court for judicial review of the judge's decision to remand him in custody. On 14 February 1996 the application for judicial review of the remand in custody for psychiatric reports was granted. The High Court made a declaration in the following terms: "that the applicant's remand in custody was unlawful".

On 27 February 1996, the applicant's solicitors addressed a request to the Lord Chancellor's Department for "substantial damages by way of compensation for his unlawful imprisonment". On 22 April 1996, the Court Service informed the solicitors that it could not pay compensation, as *ex gratia* compensation from the Court Service was limited to cases where "the court staff are guilty of maladministration or negligence". It indicated that the Court Service could not pay compensation for loss or damage arising from judicial decisions.

An opinion from counsel of 23 September 1996 confirmed that no action lay against the Lord Chancellor's Department, and added that, similarly, no action lay against the judge, the justices, the Crown Prosecution Service or the Prison Service.

COMPLAINTS

The applicant complains that his right to liberty under Article 5 § 1 of the Convention was violated during 28 April and 27 May 1994 as there was no lawful reason for detention. Nor did the detention fall within the permissible exceptions to his right. The applicant also asserts that he has no enforceable right to compensation for an unlawful detention resulting from a judicial decision in English law, and that that is in breach of Article 5 § 5 of the Convention. Under Article 13 of the Convention the applicant asserts that his right to an effective remedy in respect of his Article 5 rights has been violated. Under Article 6 § 1 of the Convention he claims that his right of access to court, in respect of his claim for compensation for unlawful detention, has been violated.

PROCEDURE

The application was introduced on 18 October 1996 and registered on 18 February 1997.

On 1 July 1998 the European Commission of Human Rights decided to communicate the application to the respondent Government.

The respondent Government indicated by a letter dated 26 October 1998 that they did not intend to submit written observations as to admissibility.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant alleges a violation of Article 5 § 1 of the Convention as regards his detention from 28 April 1994 until 27 May 1994. He also alleges violations of Articles 5 § 5, 6 and 13 of the Convention.

The Government have not made comments on the admissibility and merits of the case.

The Court recalls that, pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter “within a period of six months from the date on which the final decision was taken”.

The Court must determine the date of the “final decision” in the present case.

The letter of 22 April 1996 from the Court Service to the applicant’s solicitors stated that the Court Service was entitled to make *ex gratia* payments in certain, limited circumstances only. Any payment of compensation by the Court Service would have been *ex gratia* and not as of right. That letter cannot therefore constitute the “final decision” in respect of any part of the application.

On 23 September 1996, counsel confirmed that no action lay against the Lord Chancellor's Department, the judge, the justices, the Crown Prosecution Service or the Prison Service. That advice, however, did no more than confirm that no action lay by which the applicant could pursue an action for compensation for the detention which the High Court had declared unlawful. It cannot therefore constitute the "final decision" in respect of any part of the application, either.

Article 35 § 1 provides that the six months period runs from the final decision in the process of exhaustion. As to the applicant's complaint under Article 5 § 1 of the Convention, that final decision was the decision of the High Court of 14 February 1996.

Where there are no domestic remedies in respect of a complaint under the Convention, and where that complaint arose out of a specific decision, the six months period runs from that decision (no. 5759/72, Comm. Dec. 20.5.76, D.R. 6, 15 at 16). As to the applicant's complaints under Articles 5 § 5, 6 and 13 of the Convention, the absence of a remedy in respect of the unlawful detention was, or should have been, apparent to the applicant, who was legally represented, from the decision of the High Court of 14 February 1996. The six months period in this respect therefore began to run on 14 February 1996.

The Court therefore finds that the "final decision" in respect of the whole application is the decision of the High Court of 14 February 1996. Since the application was introduced on 18 October 1996, it has been presented more than six months after the date of the final decision.

The Court has considered whether the absence of observations from the Government on the question of the six months' rule can affect the position. It recalls that the six months' rule, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question, after an indefinite lapse of time, serves the interests not only of the respondent Government but also of legal certainty as a value in itself. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see no. 9587/81, Comm. Dec. 13.12.82, D.R. 29, 228 at §§ 13 and 16; no. 10416/83, Comm. Dec. 17.5.84, D.R. 38, 158 at § 6).

It is therefore not open to the Court to set aside the application of the six months' rule solely because a Government have not made a preliminary objection based on it.

It follows that the application is inadmissible for non-compliance with the six months' rule set out in Article 35 § 1 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

J.-P. Costa
President