Judicial Communications Office

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COURT DELIVERS JUDGMENT ON AWARD OF DAMAGES FOR INQUEST DELAY

Summary of Judgment

The Court of Appeal[1] today allowed an appeal by the Police Service of Northern Ireland ("PSNI") against the award of damages for delay in progressing the Pearse Jordan inquest and reduced the award from £7,500 to £5,000.

Background

In 1994, Hugh Jordan (Pearse Jordan's father) made an application to the European Court of Human Rights ("ECtHR") complaining that the failure to carry out a prompt and effective investigation into his son's death was a violation of Article 2 of the European Convention on Human Rights ("ECHR"). On 4 January 1995 an inquest commenced but was adjourned shortly afterwards. On 4 May 2001, the ECtHR upheld the complaint and awarded Mr Jordan £10,000 in respect of non-pecuniary damages together with costs and expenses. A fresh inquest commenced on 24 September 2012 and concluded on 26 October 2012 but the verdict was quashed following a judicial review. A subsequent appeal against that decision was dismissed in 2014. A further inquest commenced in 2016 and a verdict was delivered on 9 November 2016. That verdict was challenged in judicial review proceedings brought by Teresa Jordan, Pearse Jordan's mother, but without success. She also took over the conduct of these proceedings from her husband. She is referred to in the judgment as "the respondent".

The Claim for Damages

In 2013, Hugh Jordan had brought a judicial review seeking declarations that the Coroner and the PSNI had been responsible for the delay in the commencement of the inquest together with awards of damages in respect of the delay from 4 May 2001 to 24 September 2012. Mr Justice Stephens ("the trial judge") upheld the claim against the PSNI finding that there had been a series of failures to disclose relevant information until compelled to do so, and also a delay in commencing a process of risk assessment relating to the anonymity of witnesses. On 31 January 2014, he made a declaration that the PSNI delayed progress in the Pearse Jordan inquest in breach of Article 2 of the ECHR and contrary to section 6 of the Human Rights Act 1998 ("the HRA") and awarded damages of £7,500[2]. The parties appealed against the decision but proceedings were stayed on 10 June 2017.

On 23 October 2017 the Court of Appeal lifted the stay and the appeal was heard on 31 May 2018. At that time there was an outstanding appeal to the Supreme Court from the order staying the proceedings. Judgment was delivered by the Supreme Court on 6 March 2019 when it allowed the appeal on the basis that the Court of Appeal had not taken into account the question of proportionality and if it had done so might have not reached the same conclusion.

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[1] Lord Chief Justice, Sir Paul Girvan, Sir John Gillen

[2] *In re Jordan* [2014] NIQB 71

There was further litigation after the delivery of the ECtHR judgment in May 2001 in relation to various aspects of the procedure which should apply in the Coroners' Court including the need for the provision of legal aid for families of the deceased, changes to the Coroner's Rules to provide for the attendance of witnesses and the obligation on the PSNI to provide disclosure to the coroner on an ongoing basis for all relevant material. The House of Lords delivered judgment on 28 March 2007 in which it was established that the police were under an obligation to provide all relevant information to the Coroner as Hugh Jordan had contended.

Mr Jordan then instituted proceedings against the Senior Coroner contending that he should be removed from the hearing of the inquest. That application was dismissed but in delivering its judgment the court[3] examined the nature of the delays which had occurred in the period up to the delivery of the judgment in 2009 and the reasons for that. It recognised that the delay between 1995 and 2007 was largely due to deficiencies in the Coroner's Rules, the non-availability of legal aid for inquests, the resistance of the Chief Constable to disclosing documents and frequent and protracted litigation. The court was satisfied that the "repeated delays in commencing the inquest [in the period between March 2007 to May 2008 were entirely due to the continuing efforts of the PSNI to avoid providing to the next of kin documents that they sought in respect of the withheld portions of the investigating officer's report and documents promised by the Chief Constable to the next of kin as far back as 2000 together with claims for PII brought by the Chief Constable and the judicial review that generated".

After delivery of the judgment on 31 January 2014, the trial judge raised the issue of whether the Department of Justice ("the Department") should be added as a notice party in relation to the damages issue. He noted that in five other claims in which the PSNI and other public authorities were joined and in which a declaration accepting delay in breach of Article 2 was made, the Department had taken responsibility for the periods of delay and the awards of damages of £7,500 in each case without any requirement to analyse the individual responsibility for delay of any public authority. In this case, however, the Department objected to being joined and having regard to the stage which had been reached the Court considered it inappropriate to join it as a notice party.

Consideration

The Court of Appeal said there is an important structural difference between a claim for damages pursued in the ECtHR and a claim arising in domestic law. Whereas under the Convention liability rests upon the State, the HRA has devised a procedure broadly similar to that in tort claims where liability falls directly upon the public authority which the court finds has acted unlawfully. In a claim based on delay that can lead to a circumstance where two public authorities are each responsible for the same period of delay or alternatively each is responsible for separate periods of delay. The difficulties that may arise in the circumstances were explored to some extent in this case but the Court said that what is clear, however, is that in a delay case it is necessary to make a finding of the unlawful acts of the relevant public authority and any period of delay for which those unlawful acts bear any responsibility.

The period of delay in respect of which the claim was made in this case ran from 2001 until the inquest commenced in 2012. In the period from 2002 until 2007 there was ongoing litigation concerning the obligation of the PSNI under section 8 of the Coroners Act (Northern Ireland) 1959

[3] *In re Jordan* [2009] NIQB 76

("the 1959 Act") to supply to the coroner such information as they had at the time of notifying him of the death or were thereafter able to obtain. The PSNI had been successful before the Court of Appeal in limiting that obligation. The Court of Appeal said there was nothing to indicate any suggestion or finding that the PSNI's conduct of the litigation had been in any way improper or unlawful:

> "The fact that the issue was entertained by the House of Lords is in any event a considerable indicator that this was a matter of some considerable substance. Although, therefore, it can be said that the PSNI resisted disclosure of documentation during this period and that its position was subsequently established as being unlawful in breach of section 8 of the 1959 Act it does not follow that the PSNI have been responsible for delay in breach of the procedural obligation under Article 2."

The relevance of prolonged legal proceedings was recognised by the ECtHR in its decision in 2003[4]. The Court noted that Mr Jordan had contributed significantly to the delays as a result of pursuing legal proceedings but stated that it could not be regarded as unreasonable that he made use of the legal remedies available to him to challenge aspects of the inquest procedure. It said the fact that adjournments by the coroner were requested by Mr Jordan did not dispense the authorities from ensuring compliance with the requirement for reasonable expedition: "If long adjournments are regarded as justified in the interests of procedural fairness to the victim's family, it calls into question whether the inquest system was at the relevant time structurally capable of providing for both speed and effective access for the deceased's family."

In his 2014 judgment, the trial judge did not make a finding that the PSNI was responsible for delay in breach of section 6 of the HRA in the period between 2002 and 2007. The Court of Appeal stated that throughout that period the PSNI was legitimately pursuing legal proceedings in order to establish clarity about its obligations. It accepted that the Jordan family will have experienced frustration as a result of the delay during this period but did not consider that the PSNI can be made responsible for culpable delay arising from the prolongation of proceedings in which it appears to have engaged appropriately.

The Court of Appeal said that although no express finding was made by the trial judge that the lack of clarity on the duty on the PSNI under section 8 of the 1959 Act called into question whether the inquest system was at the relevant time structurally capable of providing for both speed and effective access for the Jordan family, there was considerable evidence to support that contention. If such a finding was made it would have highlighted the need for revising legislation. The Court said it was not clear in domestic law whether such a failure would have constituted a breach of section 6 of the HRA since section 6(6) provides that a failure to act does not include a failure to introduce in, or lay before, Parliament a proposal for legislation or a failure to make any primary legislation. At the relevant time justice was not a devolved matter and any change was a matter for Westminster.

The Court of Appeal was satisfied, therefore, that the only period in respect of which there was unlawful delay in breach of Article 2 for which the PSNI was responsible was the period from March 2007 until May 2008 when the relevant documents were provided. The first issue for it to consider, therefore, was whether the trial judge made his award in respect of that period only and secondly, was he correct in finding it necessary to afford just satisfaction to the respondent and appropriate to make the award of damages against the PSNI.

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[4] *Jordan v UK* (2003) 37 EHRR 2 at [138]

The trial judge had considered it "appropriate to make the entire award against the PSNI" but his damages judgment did not expressly state that the principle only applied where the relevant state authorities were responsible for the same period of delay. The Court said he did not differentiate between those periods where there was culpable delay by the PSNI and those where other factors contributed to the delay. It concluded, therefore, that the trial judge imposed liability on the PSNI for the entirety of the period from 2001 until 2012 rather than for the period of culpable delay. In his consideration of relevant principles of his main judgment the trial judge had said:

> "It was contended on behalf of the applicant that as a result of the decision in *Hemsworth* that a breach of Article 2 can be found *not only* where there are periods of unjustified delay but also where the overall delay in holding the inquest is such that it "cannot be regarded as compatible with the State's obligation under Article 2". If by that contention it is asserted that justified delay can lead to a finding of a breach of Article 2 then I do not consider that to be the basis of the decision in *Hemsworth*."

The Court of Appeal commented that in that passage the trial judge had correctly recognised the need for culpable delay before any finding can be made against a public authority. It considered that the only culpable delay that arose in this case was that between March 2007 and May 2008. Delays of that duration can give rise to an award of damages pursuant to Article 41 of the ECHR. The ECtHR had found culpable two separate periods of eight months delay in proceeding with the inquest. The Court of Appeal accepted that the respondent would have suffered feelings of frustration, anxiety and distress as a result of the ongoing litigation up to March 2007 and that the persisting failure of the PSNI to honour its legal obligations in the period up to May 2008 would have exacerbated those feelings. The persistent conduct consisting of culpable delay in this instance was a continuation of a failure to provide the required information in the face of a decision of the Supreme Court in the respondent's favour:

> "In our view the frustration and distress caused by such conduct against a background of very lengthy delay made it just and appropriate to afford just satisfaction by way of damages. The level of damages had to take into account the relatively short period for which the PSNI was responsible and the fact that the family of the deceased had already received an earlier pecuniary award. We consider that an award of £5,000 is consistent with awards for failure to act with promptitude in other cases from this jurisdiction and we substitute that figure for the sum allowed by the trial judge."

Conclusion

The Court of Appeal allowed the appeal to the extent that it found the PSNI was culpable for a shorter period of delay and reduced the amount of damages to be awarded.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://judiciaryni.uk).

ENDS

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