

Neutral Citation Number: [2008] EWHC 3189 (Admin)

CO/1613/2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 4 December 2008

B e f o r e:

MR KENNETH PARKER QC
(Sitting as a Deputy High Court Judge)

Between:

THE QUEEN ON THE APPLICATION OF PATRICIA BEECROFT
Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant

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(Official Shorthand Writers to the Court)

Mr A Goodman (instructed by Lawrence Lupin) appeared on behalf of the **Claimant**
Mr S Singh (instructed by Treasury Solicitors) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

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1. **THE DEPUTY JUDGE:** I refer to my judgment of 6 February 2008, reported at [2008] EWHC 364 Admin, for a full statement of the relevant facts and law, and for the legal conclusions that I reached on the issues raised in this claim. For present purposes I need do no more than recite paragraphs 24 to 27 of the judgment:

"24. ... The defendant maintained at the first opportunity that she was the victim of torture. Dr Cohen recorded that she had multiple scars on both legs and feet, attributed to the kicks causing lacerations, and that the

appearance of these scars was highly consistent with that attribution. The scars were therefore multiple and visible. Although Dr Cohen has substantial experience and expertise in the relevant skill of assessing attribution, I see no obvious reason why a competent GP, giving the claimant a thorough physical examination against the background of allegations of torture, would not have seen the scars and would not have reached the same, or a very similar, conclusion to that reached by Dr Cohen.

25. It seems to me also, having regard to the nature of the scars and the serious mistreatment to which they may well have related, that it was more probable than not that a report would have been made under rule 35(3). Given that any such report would have been capable of constituting independent evidence of torture, I believe also that having regard to the nature of the scars and the gravity of the mistreatment to which they may well have related, the putative rule 34 examination and rule 35 report would, on a balance of probabilities, have brought about the claimant's release from detention in the absence of any exceptional circumstances justifying such detention. No such circumstances are relied on by the defendant and I accordingly hold the detention, after a short period sufficient to have allowed a proper procedure to be followed, to be unlawful.

26. At paragraph 120 of D and K, Davies J proceeded on the basis that the release decision would have been taken by the end of the day following removal to detention, and that a certain number of days would have been necessary to make transport arrangements. I see no reason why a similar approach is not appropriate in this case and, on that basis, on my calculation, the release from detention should have been effected by the end of 16th December 2006.

27. It is not disputed that compensation should be awarded if the detention was unlawful. The amount of that compensation should be assessed at a later hearing, if not previously agreed in the interim, and the assessment should be reserved to myself. This conclusion also determines part of the third issue referred to earlier."

2. In the event, the parties have been unable to agree the amount of compensation that should be paid to the claimant for her unlawful detention. The parties are far apart on that issue. The claimant says that £95,000 to £100,000 is the right amount. The defendant puts forward £18,000. Each side has submitted written arguments, for which I am grateful. I am able to decide the proper amount of compensation on the basis of the written submissions and so avoid the costs and delay of further oral argument.
3. In my view, in a case of this nature the starting point is the judgment of the Court of Appeal in Thompson and Hsu v Commissioner of Police of the Metropolis [1997] 2 All ER 72. There the Court of Appeal said:

"In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for twenty four hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale."

4. The Court of Appeal also said in its 7th guideline:

"The figures which we have identified so far are provided to assist the Judge in determining the bracket within which the jury should be invited to place their award. We appreciate, however, that circumstances can vary dramatically from case to case and that these and the subsequent figures which we provide are not intended to be applied in a mechanistic manner."

5. I note that a well-known text book on damages treats Thompson as the leading authority in this area: see *McGregor on Damages* (17th edition) at para 37-008. Mr Goodman, on behalf of the claimant, has derived a mathematical formula from the figures in Thompson. He invites me to apply as a broad yardstick the formula so derived to the period of unlawful detention in this case. This approach is ingenious, but it appears to me to offend the strong admonition of the Court of Appeal that the figures in that case should not be applied in a mechanistic manner to future cases.
6. In the present context, I derive less assistance from R v Governor of Brockhill Prison ex parte Evans (No.2) [1998] 1 WLR 103 (CA) (affirmed by the House of Lords [2001] 2 AC 19). In that case, the claimant had served a lawful custodial sentence of two years for various offences, including the serious offence of robbery. On what was subsequently held to be the correct method of calculating the conditional release date, she should have been released from prison 59 days earlier than the date on which she was released. In the Court of Appeal the damages for the extra period of unlawful custody were assessed at £5,000 at 1998 prices.
7. In R(E) v Secretary of State for the Home Department [2006] EWHC 2500, Mitting J did not find Evans particularly helpful in a case, just like the present application, where the circumstances can be more fairly assimilated to those of wrongful arrest and detention for an alleged crime. That is the paradigm case to which the observations in Thompson specifically related. I agree with Mitting J's observations and proceed in a similar manner. However, neither Thompson, nor for that matter Evans, enable any precise quantification of damages for a period of unlawful detention that, following a short period of lawful custody, extends, as here, to about six months. A quantification of damages for non-pecuniary loss is, in any event, far from an exact exercise.

8. It seems to me that my essential task is to determine a figure that, first, is not out of line with the amounts assessed in Thompson and, taking due account of the very different circumstances, in Evans, appropriately adjusted for inflation; and second, a figure that is not disproportionate to amounts awarded generally for non-pecuniary loss in personal injury litigation. On that basis, in a case of this kind, I believe that an appropriate figure for basic damages would be the sum of £32,000.
9. I derive some support for that figure from R(Johnson) v Secretary of State for the Home Department [2004] EWHC 1550. That case had features comparable to the present one. Mr Johnson was detained on the fast track. During the first 38 days of detention, the Home Office were engaged in processing his claim to asylum, a process that should have taken seven days, and the remainder of the period of 53 days unlawful detention, following six days of lawful detention, followed a refusal of a fresh asylum claim.
10. The *Immigration, Nationality and Refugee Law Handbook* (2006 edition) states at page 1208 that damages of £15,000 -- about £17,000 in today's money -- were agreed between the parties. The statement is likely to be reliable because the editor of the handbook was counsel for the claimant in Johnson. I accept that the figure of £15,000 -- £17,000 in today's money -- resulted from a negotiated settlement and that it is not possible to gauge exactly the factors that underlay the settlement. However, it was a figure agreed against a similar background by the same body that is the defendant in this case and by an experienced practitioner in the relevant field. It provides a useful cross-check for the amount of £32,000 that I am minded to award for basic damages in this case.
11. The period of unlawful detention was nearly two months in Johnson and is about six months in the present case. £32,000 is, of course, not three times £15,000, or three times £17,000 (the adjusted figure for inflation). But, first, a prorated approach should not, on the authorities, be mechanically applied; and second, significant tapering of amounts in respect of longer periods of custody is necessary, in particular to ensure proportionality with other awards as explained earlier.
12. In this context, I note that the current Judicial Studies Board Guideline for the assessment of damages for a severe post-traumatic stress disorder in which the victim has difficulty in concentration and sleeping and persistently re-experiences the relevant event recommends a bottom figure of between about £36,000 to £38,000. No direct comparison can be made, of course, between severe PTSM and unlawful detention for six months. But the Guideline does give me some assurance that my figure of £32,000 is not out of line with damages for a personal injury that shares certain features with the kind of distress that is likely to result from unlawful detention.
13. The claimant also claims an amount exceeding the basic amount of damages to reflect alleged special features of this case. It does seem to me that this case has two relevant aggravating features. First, the detention was unlawful because the defendant failed to apply Detention Centre rules and operating policies, which, as explained in my earlier judgment, were designed to ensure that, in the absence of special circumstances, those who may have been the victims of torture were not held in detention.

14. As Dr Cohen says in her further statement dated 10 June 2008 at paragraph 34, detention is stressful for anyone whatever their past experiences, but it is known that torture survivors are particularly vulnerable to increased mental illness when detained. Of course, on this aspect I must proceed with caution because it is not yet established that this claimant was in fact a victim of torture. However, as explained in my earlier judgment, there was independent evidence which tended to support her account that she was such a victim. The defendant did not properly apply the detention rules and policy, and so ran the obvious risk of holding in detention someone who could well have been the victim of torture. It seems to me that it is only fair to reflect that failure and the real risk of substantial additional mistreatment that it posed to a potentially vulnerable person by applying an uplift to the basic award of damages. The amount of the uplift itself needs to incorporate a discounting factor that reflects the possibility that the claimant, notwithstanding the independent evidence, may in fact not have been a victim of torture.
15. Secondly, for the reasons explained in my earlier judgment, the defendant maintained an unjustified defence to the claim up to the eve of the hearing of the application, in circumstances where the true situation should, with reasonable diligence, have been discovered well before that date. I do not find any deliberate wrongdoing or bad faith on the part of the defendant, but I do find that the failure to exercise due diligence, in a case plainly demanding that such diligence be exercised, inevitably led to a significantly longer period of unlawful detention than would otherwise have occurred. This again appears to me to be an aggravating feature of the unlawful detention in this case and one that should be marked by an uplift of the basic award.
16. Again, the quantification of aggravated damages is not an exact exercise. Having regard to the nature of the aggravating features and to the need for a discounting factor in respect of the first such feature, I conclude that a fair and reasonable aggregate uplift should be £6,000. The purpose of exemplary damages is to punish the defendant for unconstitutional or oppressive conduct, rather than to compensate the claimant. In my judgment, the claimant is adequately compensated by the basic award, appropriately uplifted to take account of the aggravating features to which I have referred.
17. Although there were serious shortcomings in the defendant's treatment of the claimant and in the conduct of the defence, I do not find that these were deliberate or intended unlawfully to harm the claimant. The public interest does not require that the defendant be, in addition, punished for the illegality found in this case.
18. In conclusion, therefore, the total award is one of basic damages of £32,000 and aggravated damages of £6,000, giving a total of £38,000.
19. MR SINGH: Thank you, my Lord.
20. THE DEPUTY JUDGE: Any further application?
21. MR SINGH: No, my Lord.
22. THE DEPUTY JUDGE: Thank you very much.