



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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36505/02  
by Carl Wade AUGUST  
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on  
21 January 2003 as a Chamber composed of

Mr M. Pellonpää, *President*,

Sir Nicolas Bratza,

Mr A. Pastor Ridruejo,

Mrs E. Palm,

Mr M. Fischbach,

Mr J. Casadevall,

Mr S. Pavlovschi, *judges*,

and Mrs F. Elens-Passos, *Deputy Section Registrar*,

Having regard to the above application lodged on 11 September 2002,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Carl Wade August, is a United Kingdom national, who was born in 1976 and lives on the Isle of Wight. He is represented before the Court by Ms Y. Spencer of the Children's Legal Centre.

### A. The circumstances of the case

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

In 1985, the applicant, aged 8, was taken into voluntary care by the local authority. In 1987, he was diagnosed as being a disturbed child and in March 1990 assessed as being in need of psychiatric assessment.

In the summer of 1990, while placed at a residential centre, the applicant, aged 13 years, met C., a 53 year-old man, in a public lavatory. Oral sex was performed by both parties and the applicant was paid ten pounds sterling. Over the next four months, the applicant alleged that C. committed further acts of gross indecency and buggery on the applicant. The applicant informed the social services who took no action. He then informed the police.

On 9 June 1993, C. was convicted of one count of buggery involving the applicant in which the evidence was that C. was the passive participant and two counts of gross indecency. He was sentenced to seven years' imprisonment. There was a finding by the judge on sentencing that the applicant did not appear older than his years and that C. posed a serious risk to other children. On appeal, the Court of Appeal reduced C.'s sentence to five years, noting that the judge had been entitled to conclude that C. was likely to commit offences which might cause serious harm in the future but that the sentence was too high in the special circumstances of this case, in particular the part played by the victim "who had gone to the public lavatory for the purpose of seeking out someone to obtain money from them for homosexual activity and who was the active partner in the only act of buggery which took place".

On 3 April 1997, the applicant applied to the Criminal Injuries Compensation Authority (CICA). A report dated 22 December 1997 by a consultant psychiatrist prepared for this purpose indicated that the applicant had shown behavioural signs and indicators that suggested that he had been sexually abused before the age of ten.

On 13 June 1997, the CICA rejected the applicant's application for compensation on the grounds that he was not the victim of violence as required under paragraph 8(a) of the Criminal Injuries Compensation Scheme, that his own conduct had contributed to the incident and that in the circumstances it was not appropriate that he should receive an award and

that they had taken into account the applicant's unlawful conduct pursuant to Article 13(e) of the Scheme (following the offences, the applicant had himself committed three offences against the person, one offence against property, five offences of theft and one of failing to surrender to bail).

On 10 November 1997, the CICA upheld its decision on the applicant's application for review.

On 21 January 1998, the applicant appealed against the decision, arguing that *inter alia* as a child he had been incapable of consenting to the sexual acts in question, and that non-consensual indecent assault and buggery could not be other than a crime of violence.

At the hearing before the CIC Appeal Panel, at which C., the applicant and the investigating police officer gave evidence, the applicant's representative accepted that the applicant had participated "voluntarily" in the acts, in that he was not forced by threats of physical violence but submitted that his consent was vitiated by his age, history in care and earlier history of sexual abuse.

By decision of 3 November 1998, amplified by further reasons on 18 January 1999, the Appeal Panel rejected the appeal on the ground that there had not been a crime of violence.

The applicant applied for judicial review on 3 February 1999. A further psychiatric report pointed out that the applicant was a damaged and vulnerable child with a serious mental health problem, that predatory paedophiles targeted such boys and that given C.'s age, it could not be regarded that the applicant was able to make an "informed choice" in the matter.

On 4 November 1999, the High Court refused the application. Mr Justice Owen held that it did not follow that because there could not be a consent valid in law that there was a crime of violence. It was a matter of fact to be decided by the panel who heard the witnesses and no error of law was disclosed by their decision.

On 18 December 2000, the Court of Appeal refused his appeal, agreeing that a sexual offence was not *per se* a crime of violence and that whether violence was involved depended on the facts of the individual case.

Leave to appeal was refused by the House of Lords on 26 March 2002.

## **B. Relevant domestic law and practice**

The Criminal Injuries Compensation Scheme provides for the payment of compensation to persons who have sustained criminal injury.

"8. For the purposes of this Scheme, 'criminal injury' means one or more personal injuries as described in the following paragraph ...

- (a) a crime of violence (including arson, fire-raising or an act of poisoning ...

13. A claims officer may withhold or reduce an award where he considers that: ...

(d) the conduct of the applicant before, during or after the incident giving rise to the application makes it inappropriate that a full award or any award at all be made; or

(e) the applicant's character as shown by his criminal convictions ... makes it inappropriate that a full award or any award at all be made ..."

## COMPLAINTS

The applicant complained under Article 8 of the Convention that his right to private life was violated by the finding of the court that he had consented to the sexual offences committed against him and was not the victim of a crime of violence.

He complained under Article 6 of the Convention that he did not have a fair trial of his claim for compensation due to the findings of the Appeal Panel and Court of Appeal that he had consented to the criminal acts committed against him.

He complained under Article 14 in conjunction with Articles 6 and 8 that he had been held, as a result of previous sexual experience, to have consented to his own abuse and that the CIC Scheme failed to recognise that children should be treated differently from adults.

Finally, he complained under Article 13 that he was prevented from exercising his civil right to seek compensation by the findings that he was not a victim of a crime of violence.

## THE LAW

1. The applicant complains under Article 8 of the Convention that he was not regarded as a victim of a crime of violence in the proceedings brought by him before the CICA.

Article 8 of the Convention provides as relevant:

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The applicant argued that his right to physical and moral integrity, which included the right to be protected from sexual abuse, had been violated as a

result of the crimes committed against him by C. The State was under a positive obligation to prohibit and prevent sexual abuse and exploitation of children and the approach taken in the proceedings in not finding him a victim of violence due to his own conduct was in breach of this obligation.

The Court recalls that in *X. and Y. v. the Netherlands* a violation of Article 8 in its private life aspect was found where domestic law failed to provide for the possibility of taking criminal proceedings against a man who had sexually assaulted the applicant's mentally handicapped daughter (judgment of 26 March 1985, Series A no. 91). It may be noted that this situation is significantly different from that in the present case, where the abuser, C., was subject to criminal proceedings and received a substantial term of imprisonment in respect of his conduct with the applicant. It cannot therefore be said that the United Kingdom criminal law condoned or permitted the acts which C. performed.

The applicant nonetheless appears to argue that the failure to regard him as a victim of a crime of violence for the purposes of the Criminal Injuries Compensation Scheme discloses a failure to protect his Article 8 rights. It must be pointed out that Article 8 does not as such include a right to receive such compensation. Nor can it be argued that the provision of an *ex gratia* award by the State to the applicant forms part of a deterrent framework necessary to give "practical and effective" protection of children against abuse by adult offenders. There is no argument in the present case that the authorities were in some way responsible for allowing the abuse to take place such that they should be held liable for any damage which the applicant suffered. That said, the Court is not persuaded that the refusal by the courts to equate sexual offences against children with crimes of violence in all circumstances deprives the applicant of protection of his physical and moral integrity. The applicant's counsel at the hearing before the Appeal Panel acknowledged that the applicant had not been coerced into the acts concerned and had acted "voluntarily". The Court of Appeal had also noted in reducing C.'s sentence that the applicant had been seeking out the opportunity to make money from such acts and had been the active participant in the act of "buggery". It is not inconsistent with acknowledgement that the applicant was a vulnerable and damaged child who required help to find that he was nonetheless a willing and active participant in the acts and not a victim of violence, in the commonsense meaning of the words, when he and C. carried them out.

The Court finds no appearance of a violation of Article 8 of the Convention in the circumstances of this case. This complaint must therefore be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains that he did not have a fair trial in the criminal

injuries proceedings, invoking Article 6 § 1 which provides as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

The Court notes that the Criminal Injuries Compensation Scheme provides *ex gratia* awards to persons who can claim to be victims of criminal offences within the definitions set out in the scheme. It is separate from any notions of tortious or civil liability that might be owed by persons responsible for any damage which the applicant suffered, an action lying in the civil courts to enforce any such rights that the applicant might enjoy in that respect.

It is not apparent therefore that the proceedings before the CICA and the CIC Appeal Panel concerned any of the applicant's civil rights in the sense guaranteed by Article 6 § 1 of the Convention. Even assuming that the proceedings did fall within the scope of Article 6 § 1 of the Convention, the Court would observe that it does not itself guarantee any particular content for (civil) “rights and obligations” in the substantive law of the Contracting States (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 46, § 81; *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, p. 70, § 192; *Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301, p. 37, § 80). The decisions of the relevant bodies concerning the interpretation and application of the substantive content of any “right” (in this case the claimed right to an award under the Criminal Injuries Compensation Scheme) are matters which in general fall outside the scope of this Court's supervision (see *Z. and Others v. the United Kingdom*, no.29392/95, ECHR 2001-V, §§ 87 and 98). As the applicant had access to the courts, with legal representation, and the opportunity to argue the points in his favour, the Court does not find any appearance of unfairness in the proceedings in question.

This part of the application must also be rejected, whether as incompatible *ratione materiae* with the provisions of the Convention or as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. The applicant complains that the approach taken by the Appeal Panel and the Court of Appeal was discriminatory contrary to Article 14 of the Convention taken in conjunction with Articles 8 and 6 of the Convention.

Article 14 provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Court recalls that Article 14 only applies to differences in treatment

between persons in analogous or relevantly similar positions in the enjoyment of the other rights set out in the Convention. It has noted above that there is no right as such to receive *ex gratia* awards for criminal injuries contained in Article 8 and that no civil right to obtain such an award would appear to arise for the purposes of Article 6.

Even assuming however that the applicant's complaints may, arguably, fall within the scope of either of those provisions, the Court is not persuaded that the applicant can claim to be a victim of a discrimination for the purposes of Article 14 of the Convention.

The applicant complains in essence that he is treated differently because he is not regarded as being a victim of a crime of violence, even though he was abused by an adult perpetrator of criminal sexual offences. He claims that he is being penalised because of his damaged and abused background and considerations of voluntariness should not be taken into account where children are concerned. The Court would note that the scheme is restricted to certain categories of criminal offences, in particular to those which are regarded as "crimes of violence". This criterion applies equally to all applicants, whether children or adults and each decision as to whether an offence involves "violence" is taken having regard to the individual facts of the case. The Court is not persuaded that the approach taken by the Appeal Panel and the Court of Appeal in taking into account the nature of the applicant's participation in the offences discloses any difference of treatment based on any element of personal status of the applicant. While it is true that children are often more vulnerable and more in need of protection than adults, this is not sufficient to justify any general proposition that different considerations must apply to children when assessing eligibility for compensation for criminal injuries.

Nor can the applicant rely on Article 14 to claim that the Criminal Injuries Compensation Scheme should apply to victims of all crimes or that all victims of sexual offences should be regarded as falling within the meaning of "crime of violence". To the extent that it might be argued that distinguishing between different types of crime for the purposes of *ex gratia* compensation could constitute a difference in treatment, the restriction of the scheme by the legislature to crimes perceived as being particularly serious due to the element of violence involved falls, in the Court's view, within the Contracting State's margin of appreciation and may be regarded as having objective and reasonable justification.

This complaint is also manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

4. Finally, the applicant complains under Article 13 of the Convention that he was prevented from seeking compensation for the crimes committed against him.

Article 13 provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

According to the Court’s case-law, Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

The Court has above found that the applicant’s complaints under Articles 8, 6 and 14 are, variously, incompatible *ratione materiae* and manifestly ill-founded. For similar reasons, the applicant does not have an “arguable claim” and Article 13 is therefore inapplicable to his case. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Françoise Elens-passos  
Deputy Registrar

Matti Pellonpää  
President