

A and B v Criminal Injuries Compensation Authority [2021] UKSC 27

Case Summary

Judgment was handed down by the Supreme Court on 9 July 2021 in the case of *A and B v Criminal Injuries Compensation Authority*. The Supreme Court held that the rule which prohibits applicants with unspent convictions from obtaining compensation under the Criminal Injuries Compensation Scheme (CICS) does not breach their rights under articles 4 and 14 of the European Convention on Human Rights.

Background

The appellants were twin brothers and Lithuanian nationals. They were convicted of burglary and theft in 2010 and 2011 and given custodial sentences in Lithuania. In 2013 they were trafficked to the United Kingdom and subjected to labour exploitation and abuse. Their traffickers were subsequently convicted and sentenced to three and a half years' imprisonment.

In 2016 the appellants applied for compensation under the CICS. The CICS is a statutory scheme pursuant to the Criminal Injuries Compensation Act 1995, which was passed following the United Kingdom's ratification of and the entry into force of the European Convention on the Compensation of Victims of Violent Crimes 1983. Contracting states undertake to provide compensation to victims of trafficking who have been subjected to violent crime, where compensation is not fully available from other sources, such as from the traffickers themselves.

Pursuant to an "exclusionary rule" under paragraph 26 and Annex D of the CICS, an applicant with an unspent conviction that resulted in a custodial or community sentence is automatically disqualified from receiving an award. At the time of the appellants' applications their convictions in Lithuania were unspent, and accordingly they were refused awards.

The appeal

The appellants brought judicial review proceedings to challenge the lawfulness of the exclusionary rule. The Administrative Court dismissed the application and the Court of Appeal dismissed the appeal.

The appellants appealed further to the Supreme Court, arguing that the exclusionary rule constituted unjustified discrimination in breach of article 14 read with article 4 of the European Convention on Human Rights. Article 4 provides that no one shall be held in slavery or servitude, while article 14 provides that the rights under the Convention shall be secured without discrimination on the grounds of various characteristics, including “other status”.

Decision of the Supreme Court

The Supreme Court held that in applying the scheme to victims of trafficking, the UK has chosen to confer a degree of protection to promote their interests. The Court held that the rights voluntarily conferred in this way fall within the general scope or “ambit” of article 4 and must, therefore, be made available without discrimination.

However, the Court went on to hold that, although victims of trafficking clearly have “other status”, it could not identify any feature of the offence of people trafficking which could require preferential treatment to be accorded to victims of trafficking over victims of other serious crime. None of the international instruments referred to require more favourable treatment to be accorded to victims of trafficking so far as compensation by the state is concerned. Therefore the appellants’ case on unlawful discrimination founded on the fact that they were victims of people trafficking was not made out.

However, the Court held that the appellants also have “other status” by virtue of having unspent convictions. That was because, once imposed, a custodial or community sentence has a significance independent of what the offender has done. As long as a conviction remains unspent it has incidents and consequences, in particular obligations of disclosure, which continue to have far-reaching implications for those who have been convicted. Clearly, there

is a difference in treatment between those who have relevant unspent convictions and who are therefore excluded from compensation, and those who do not and are therefore not excluded from compensation.

Accordingly, what was required to be justified was the difference in treatment arising from the exclusionary rule, the Court holding that the applicable test is whether the exclusionary rule is manifestly without reasonable foundation.

The Government's consultation paper outlined that: *"...The Scheme is a taxpayer-funded expression of public sympathy and it is reasonable that there should be strict criteria around who is deemed 'blameless' for the purpose of determining who should receive a share of its limited funds. We consider that, in principle, awards should only be made to those who have themselves obeyed the law and not cost society money through their offending behaviour..."*

The appellants did not dispute that this was a legitimate aim, and that the exclusionary rule was rationally connected with that aim. Rather, they complained that the exclusionary rule was not proportionate in that it imposed a bright line rule without the possibility of the exercise of a discretion in favour of an applicant, which had been a feature of earlier iterations of the scheme.

Could a bright line rule be justified in the context of the CICS? The Court said it clearly could:

- (1) This is an area of policy in which a considerable degree of latitude is accorded to the legislator as to the form and scope of the CICS.
- (2) The object of the CICS, namely the allocation of limited resources to deserving victims of crime as an expression of public sympathy, is such that the legislator is entitled to adopt a scheme which operates by clearly defined rules. The chosen approach has the considerable advantages of clarity and consistency.
- (3) It is significant that the CICS was approved by Parliament following an extensive process of consultation and an equality impact assessment.

The Court held that Annex D read as a whole provides a graduated approach to withholding or reducing awards of compensation, hinging on the seriousness of the offending, the circumstances of the offender and applicable mitigation, all reflected in the sentence passed and the time which has elapsed since the offending in question. The exclusionary rule is no more intrusive than is required and it strikes a fair balance between the competing interests.

Accordingly, the appeal was dismissed.

The judgment can be found [here](#).

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