



THE COURT ORDERED that no one shall publish or reveal the names or addresses of the Appellants who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Appellants or of any members of their family in connection with these proceedings.

9 July 2021

PRESS SUMMARY

A and B (Appellants) v Criminal Injuries Compensation Authority and another (Respondents)
[2021] UKSC 27
On appeal from [2018] EWCA Civ 1534

JUSTICES: Lord Lloyd-Jones, Lady Arden, Lord Hamblen, Lord Burrows, Lord Stephens

BACKGROUND TO THE APPEAL

The Criminal Injuries Compensation Scheme (“**CICS**”) is a statutory scheme made by the second respondent, the Secretary of State for Justice (“**the Secretary of State**”), pursuant to powers conferred on him by the Criminal Injuries Compensation Act 1995. Under paragraph 4 of the CICS, compensation may be awarded to a person “if they sustain a criminal injury which is directly attributable to their being a direct victim of a crime of violence”. Paragraph 26 and Annex D of the CICS provide that an award of compensation will not be made to a person who has an unspent conviction for an offence which resulted in a custodial sentence (“**the exclusionary rule**”).

The appellants are twin brothers and Lithuanian nationals. The first appellant, A, was convicted of burglary in June 2010 by a Lithuanian court and was sentenced to a three-year custodial sentence. The second appellant, B, was convicted of theft in December 2011 by a Lithuanian court and was sentenced to an 11-month custodial sentence.

In 2013, the appellants were trafficked from Lithuania to the United Kingdom and subjected to labour exploitation and abuse. Their treatment constituted criminal offences for which, on 22 January 2016, the traffickers responsible were convicted and were each sentenced to a custodial term of three and a half years.

On 16 June 2016, the appellants applied to the first respondent, the Criminal Injuries Compensation Authority (“**CICA**”), for compensation under the CICS. On 6 July 2016, their applications were refused pursuant to the exclusionary rule.

The appellants brought a claim for judicial review against the CICA and the Secretary of State. The appellants argued, amongst other things, that the exclusionary rule was discriminatory and therefore not compatible with the United Kingdom’s obligations under the European Convention on Human Rights (“**ECHR**”). The High Court dismissed their claim. The Court of Appeal then dismissed their appeal. The appellants now appeal to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Lloyd-Jones gives the sole judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

Article 14 of the ECHR does not impose a freestanding prohibition on discriminatory treatment. It prohibits discrimination only in the context of the enjoyment of the rights and freedoms set out in the ECHR. As a result, the appellants need to establish that the exclusionary rule is sufficiently closely connected with one of the substantive ECHR rights in order to bring article 14 into play [23]. The Court concludes that these appellants can do so. By applying the CICS to victims of trafficking, the United Kingdom has chosen to confer a degree of protection to promote their interests. In doing so, it is applying a measure which has a sufficient connection with the core value of the protection of victims of trafficking under article 4 of the ECHR, which prohibits slavery and forced labour. The rights voluntarily conferred under the CICS must therefore be made available without discrimination [39].

Article 14 of the ECHR prohibits differential treatment on specified grounds, including sex and race, and on the basis of “other status[es]” [40]. In the present case, the Court considers that the appellants enjoy two relevant “other status[es]”, namely being victims of trafficking and having an unspent conviction which resulted in a custodial or community sentence [46], [67]. These are identifiable, personal characteristics which have significance independent of the CICS [46], [57], [65]-[66].

The question, then, is whether the exclusionary rule gives rise to discrimination. There are two elements to this part of the case. First, discrimination may arise where the state fails to treat differently people whose situations are significantly different [69]. The Court concludes that the CICS is not discriminatory in this sense [78]. There is no feature of the offence of people trafficking which would require preferential treatment to be accorded in the present context to victims of trafficking over victims of other serious crime [71]. Secondly, discrimination may arise where people who enjoy a relevant status are treated differently from people not sharing that status who are in a similar situation. The Court concludes that the CICS is discriminatory in this sense. Clearly, there is a difference in treatment between victims of trafficking who have relevant unspent convictions and who are therefore denied compensation, and victims of trafficking who do not have such convictions and are therefore not denied compensation. Individuals in both groups might be victims of crimes of violence and so, but for the exclusionary rule, would both be potentially eligible for compensation under the CICS [79].

Differential treatment will not, however, breach article 14 of the ECHR if it can be justified. The test to be applied when considering the question of justification in the present context is whether the decision to adopt the measure under challenge was “manifestly without reasonable foundation” [82]. This follows from a number of features of this case, including that the CICS operates in the field of social welfare policy, where courts should normally be slow to substitute their view for that of the decision-maker, and that the CICS was approved by Parliament [83]-[84]. The status relied upon by the appellants is also not within the range of suspect reasons, such as sex and race, where discrimination is particularly difficult to justify [85].

Applying that test to the facts of this case, the Court finds that the CICS is not manifestly without reasonable foundation [92]. It pursues the legitimate objective of limiting eligibility to compensation to those deserving of it [86]-[88]. It is also proportionate. This is an area in which a considerable degree of latitude is accorded to the legislator and in which it is appropriate to adopt bright line rules, in order to promote clarity and consistency [90]. The CICS takes a graduated approach to withholding or reducing compensation, reflecting in various ways both the seriousness and the age of a claimant’s previous conviction [91]. In those circumstances, it is clear that the measure is no more intrusive than it needs to be and that it strikes a fair balance between the competing interests at stake [92].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>